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**AT&T failed to Deny the INGA to PSE Traffic Only Transfer Within 15 days
-AT&T's Only Defense was 2.2.4 in 1995, Not Section 2.18 and 2.2.4 Was Denied by 1996
-AT&T's 1996 Position is the FCC CAN NOT Issue Declaratory Ruling
-FCC Case Is Moot & NJFDC Has Determined AT&T's Sole Defense Has No Merit**

March 12, 2016

Richard Brown

1) Here as **Exhibit A** is a letter from PSE to AT&T transferring the 4 Inga Companies traffic directly to PSE--- as opposed to the CCI to PSE traffic transfer. Note the letter includes as **Exhibit B** Letters of Agency and **Exhibit D** all of the AT&T Transfer of Service Agreement forms. Also note that it states the transaction should be retroactive to Jan 1, 1995 "as per our original order" which was sent in Dec 1994.

2) **Exhibit C** is a letter from PSE detailing plaintiff's compensation and the last paragraph states that the traffic can be returned within 30 days to plaintiff's plans to meet the revenue commitments of what was expected to be a new contract tariff for plaintiffs. It was anticipated that plaintiff's plans could be upgraded into a new CT that was competitive with CT-516 that PSE had. Since the Inga plans were being merged and upgraded into a Contract Tariff with another TERM ASSUMPTION STARTING DATE, AT&T could not require a security deposit. **Exhibit E** are a couple of letters trying to get AT&T to give plaintiffs its own contract tariff but AT&T was just leading plaintiffs on. Plaintiffs were later told by AT&T account manager Joseph Fitzpatrick after he left AT&T that AT&T wanted plaintiffs out of business and plaintiffs were never getting a contract tariff. **Exhibit K** is a 3 page exhibit showing yet another request for a contract tariff that AT&T simply refused and the FCC

3) **Exhibit F** is the CCI-PSE agreement that clearly contemplates that it needed to meet commitments and expected to do so either by transferring the traffic back from PSE or by restructuring the contract out in time under the pre June 17th 1994 exemption and using the existing RVPP ID to maintain grandfathered shortfall and termination immunity status—as was its option to reuse its grandfathered RVPP ID under AT&T's CSTPII OPTION B offering.

When ordering a CSTP II AT&T required a RVPP plan to be ordered as the RVPP ID was tracked as to various grandfathered dates:

The Customer must subscribe to a new Revenue Volume Pricing Plan (see Section 3.3.1.M.). Customers ordering a CSTP II **must also order an RVPP** to cover all the same AT&T 800 Services. (Section 3.3.1.Q, 7th Revised Page 61.16.1.)

4) In 1995 there were originally 8 plans, but plans were merged together and by 1996 there were five plans left. The five CSTP II plans in question have RVPP ID numbers as follows: 2430, 2829, 3124, 3524, and 3663. CSTP II plan 3663, the last plan ordered by Petitioners, and was ordered prior to June 17, 1994. AT&T issued RVPP ID numbers sequentially.

5) On June 17, 1994, AT&T's tariff was revised to include prospectively monthly pro-rata shortfall provisions when restructuring. Here as **EXHIBIT J** are the 4 pages of tariff changes regarding the June 17, 1994 exemption from shortfall and termination charges when discontinuing (aka restructuring/refinancing/upgrading) an existing CSTPII plan.

6) AT&T's RVPP ID numbers then being issued were already in the mid 3700's. There is no question but that all of the Petitioners' CSTP II Plans were required by law and tariff to be treated as pre-June 17, 1994 plans exempt from shortfall and termination charges. That is why AT&T paid co-plaintiff CCI substantial cash and did not pursue CCI for the \$80 million in shortfall and termination charges unlawfully inflicted against end-users in June 1996. If AT&T actually believed the charges were lawful AT&T would not have paid CCI what was substantial hush money.

7) **Here as Exhibit M** is a page from the July 1, 1997 Settlement agreement between co-plaintiffs CCI and AT&T. It indicates the plan ID's at issue and all of these plans were ordered prior to June 17, 1994 and thus immune from shortfall and termination.

8) **Exhibit G** AT&T's sole defense in 1995 --raised after 15 days----was section 2.2.4 fraudulent use in **which AT&T conceded that Customer of Record plan obligations (revenue and time commitment) do not transfer on a traffic only transfer.** There was no controversy as to which obligations transfer under 2.1.8 in 1995. In order for AT&T to assert its 2.2.4 fraudulent use defense AT&T had to spell out to Judge Politan that under the tariff CCI must keep its revenue and time commitment and thus be liable for shortfall and termination liability.

9) AT&T understands that CCI's revenue and time commitment do not transfer unless it is a **plan** transfer. So AT&T in 1996 mischaracterized the CCI-PSE transfer as a **plan** transfer instead of a **traffic only** transfer. AT&T also misled by stating **all** the locations were transferred when in fact that is not the case as the main billed /lead/home account remained on CCI's plan to make sure it was a traffic only transfer---- not a **plan** transfer. Here is the AT&T scam in operation....

AT&T's August 26, 1996 FCC Comments page 4:

2. Second Transfer Request (CCI to PSE)

On or about January 13, 1995 CCI made a transfer request to AT&T -ostensibly under Section 2.1.8 of AT&T's Tariff F.C.C. No. 2 - that it be allowed to transfer all of the traffic (all locations subscribed under the CSTP II plans at issue), but not the plans themselves to Public Service Enterprises of Pennsylvania, Inc. ("PSE"). AT&T objected on the grounds that Section 2.1.8 did not authorize the transfer of a plan unless the transferee, in this case PSE, assumes the original customer's liability and

10) Above AT&T misrepresents that **ALL LOCATIONS** were transferred and that the CCI – PSE transfer is a **PLAN** transfer then under that false statement correctly states all obligations transfer on a plan transfer.

Below AT&T's August 26, 1996 FCC Comments page 5 continue from above and state that as a traffic only transfer the plan commitments stayed with CCI:

“that the location-only transfer violated the "fraudulent use" provisions of Section 2.2.4 of its tariff because the transfer had both the purpose and the effect of avoiding the payment, in whole or in part, of tariffed shortfall and termination charges. The proposed transfer would have transferred the entire revenue stream to PSE **without the corresponding obligations to pay any shortfall and termination charges under the CSTP II Plans.**”

11) In 2006 before NJFDC Judge Bassler AT&T came up with a brand new defense that under a 2.1.8 “traffic only non-plan” transfer CCI must transfer its revenue and time commitment. This was a complete flip from when it had asserted from 1995-2005 that CCI must keep its plan commitments. AT&T after the DC Circuit loss of its 2.2.4 fraudulent use defense no longer needed to mischaracterize the CCI-PSE transfer as a plan transfer as its new scam was-----whether it is a traffic only or a plan transfer “all the obligations” transfer. In 1995 AT&T absolutely knew that all obligations don't transfer on a “traffic only” transfer and that is why AT&T misrepresented that all locations were transferred and that it was a plan transfer----not a traffic only transfer. If in 1995 AT&T actually believed that plan obligations transferred no matter whether it was a plan or a traffic only transfer AT&T would not have needed to misrepresent that all locations transferred and that it was a plan transfer.¹

¹ AT&T 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**— or Mr. Yeskoo called it the **“lead account”** ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn't that correct?**

Inga: Yes

12) AT&T was actually misrepresenting the facts and simultaneously arguing that it was both a plan transfer and a traffic only transfer. Plaintiffs agree that IF it were a plan transfer the plan obligations would transfer. –No controversy. Plaintiffs agree that if it is a traffic only transfer –which it actually was---CCI’s plan commitments don’t transfer. No Controversy.² The only controversy in 1995 was fraudulent use under 2.2.4 and that controversy was determined by Judge Politan as being meritless.

13) AT&T on page 9 of its August 26, 1996 FCC Comments states the traffic only transfer was a violation of fraudulent use Section 2.2.4 and it was inappropriate for the FCC to rule:

the purpose and effect of the transfer were to avoid the payment, in whole or in part, of tariffed shortfall and termination charges in violation of the antifraud provisions of Section 2.2.4 of AT&Ts Tariff F.C.C. No. 2. Declaratory relief is inappropriate where, as here, material facts are disputed.

14) AT&T was confirming that the shortfall and termination charges which occur by not meeting the plans revenue and time commitment do not transfer to PSE. This of course changed in 2006 when AT&T intentionally deceived NJFDC Judge Bassler and carried that fraud on the FCC in 2006 and Judge Wigenton in 2014. AT&T then carried its scam to the FCC in 2006 and NJFDC Judge Wigenton. AT&T got away with the intentional fraud without ever presenting any evidence. If AT&T was telling the truth it would have thousands of samples but AT&T instead lied to Judge Wigenton saying it addressed the evidence at the FCC when it did not. The FCC knew better and on Jan 12th 2007 released its Order that advised the District Court that AT&T’s defenses under 2.1.8 did not expand the scope of the Third Circuit referral on 2.2.4 fraudulent use.

15) In 1995 Judge Politan was listening to highly repetitive testimony from CCI’s president Mr Shipp agreeing with AT&T counsel Mr Whitmer that CCI must keep its plan commitments. Both parties kept agreeing that the plan commitments (revenue and time and their associated liabilities for shortfall and termination) do not transfer.

16) Mr Shipp kept agreeing that it was correct that under 2.1.8 the revenue and time commitments and their associated liabilities for shortfall and termination penalties do not transfer on a traffic only transfer. Judge Politan got so annoyed as AT&T counsel kept saying the obligations don’t transfer and Mr. Shipp simply agreed and it led to this comment from the very frustrated and annoyed Judge Politan:

² Politan March 1996 **pg.17 fn. 7**: “Indeed, AT&T's own counsel focused the issue by indicating that the tariffed obligations “*involved herein*” are all tariffed obligations, for which “CCI, not PSE” would be obligated.

AT&T's Whitmer: And one of the obligations of the customer, Winback & Conserve or CCI, that did not go to PSE in the attempted transfer was the obligations for shortfall and termination, correct?

Mr Shipp: **That's correct.** And we so identified that on the transfer of service document.

The Court: **I know all these facts, Mr Whitmer. I really do. I swear to God.**

Mr Whitmer: I have no further questions.

17) AT&T counsel Whitmer was asserting his fraudulent use defense that under 2.1.8 the revenue and time commitments do not transfer and thus CCI would be responsible for shortfall and termination potential for failure to meet those commitments. Mr Whitmer asserted the Jan **1995** transfer was going to deprive AT&T of collecting shortfall in the future, but these plans were pre June 17, **1994** exempt from the shortfall.

18) Judge Politan by March 1996 understood explicitly the plans were exempt and issued the injunction. AT&T counsel obviously knew at the time of the **1995** transfer that the plans were pre June 17th **1994** immune but continued to assert AT&T's meritless fraudulent use defense on Judge Politan.³

19) AT&T never provided any tariff evidence to Judge Politan that the plans were not pre June 17, 1994 immune and Judge Politan finally ordered the injunction as he was furious how AT&T played his Court and had enough of AT&T's intentional delays. Judge Politan asked AT&T counsel why isn't Winback getting its own Contract tariff. Judge Politan knew AT&T was simply looking to put plaintiffs out of business. Judge Politan issued the injunction without ever knowing that AT&T had entered into the FCC Oct 23, 1995 Order agreeing not to violate 2.1.8 and pre June 17 1994 exemption and still Judge Politan in March 1996 issued the injunction.

20) **Exhibit H page 1** is March 23, 1995 oral argument in which NJFDC Judge Politan is looking at 2.1.8 and not seeing in the language how it allows traffic only transfers as he did not recognize the "any number" of accounts language. CCI's President was explaining what he always had done in the past when using 2.1.8 and explained the difference in which obligations transfer between a plan transfer and a traffic only transfer.

The Court: Where does it say this? How do you get to this?

Mr Shipp: How do I get to that ?

The Court: Where does it say that in any document or any tariff? **Apart from 2.1.8?**

³ AT&T's fraudulent use assertion was premised on suspecting shortfalls. Judge Politan did not agree: "**premised on the danger of shortfalls**, the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

The Court: I have a simple question. Whether you can split the thing in two pieces. **That is all the question I had.** I mean, you know.

Mr La Fiura: I understand

The Court: I got Mr Meanor's certification here, all right. Here's Tariff Transmittal No 9229.

21) Judge Politan had 1 question—does the tariff allow traffic only to transfer w/o the plan. Judge Politan clearly understood that under the tariff PSE does not assume the Revenue and time commitment on a traffic only transfer. His Courts' issue was simply does anywhere in the tariff allow traffic only transfers. Judge Politan states is there any other place **“apart from 2.1.8”** that just the traffic can transfer.

22) So Judge Politan did not care how the accounts got to PSE he just wanted to know if the tariff allowed just accounts to transfer and not the plan. Whether the accounts transferred via 2.1.8 bilateral transfer or 3.3.1.Q-4 where the former company of the traffic CCI or Inga deletes the traffic and the new company PSE adds the traffic **it did not matter.** Whether you take the Garden State Parkway or the NJ Turnpike to the Jersey Shore it did not matter as Judge Politan was simply looking to see if the tariff permitted in his word: “fractionalization” i.e. traffic only transfer. March 1996 Judge Politan Decision **See Page 15-16:**

The Central issue in this controversy is whether plaintiffs may fractionalize “plans” as contracted between AT&T and its aggregators and as governed by Tariff F.C.C. No 2. Specifically, the question is whether plaintiffs may transfer traffic under a plan without transferring the plan itself in order to obtain more attractive discounts for end users. **The issue of whether Tariff FCC No. 2 permits fractionalization has been referred by this Court to the F.C.C.**

23) Whether the traffic moved via 2.1.8 or 3.3.1Q-4 is **not relevant.** The issue before NJFDC Judge Politan was his phrase (fractionalization). Does Tariff No 2 allow the plan to be separated from the traffic (end-user locations). It did not matter to the NJFDC how the accounts got from CCI to PSE as long as AT&T was protected for its costs which occurs whether 2.1.8 or 3.3.1Q-4 is used.

24) **Here as Exhibit I** is AT&T credit manager Carl Williams certification on November 28th 1995 asserting AT&T's fraudulent use defense under 2.2.4 that AT&T was at risk for CCI's depriving AT&T for collecting on potential shortfalls. This November 28, 1995 certification is of course after the FCC's October 23, 1995 Order---(here as Exhibit P)--- in which AT&T was ordered to stop violating the pre June 17 1994 shortfall exemption and unlawful denials of section 2.1.8 transfers of service. Carl Williams was explaining the terms and conditions of the tariff that CCI must keep its revenue commitment and time commitment on the traffic only transfer and thus CCI would be liable for shortfalls and termination liability. There was no controversy or uncertainty between the parties that whether section 2.1.8 or 3.3.1-4 was used

CCI/INGA does not transfer and PSE does receive Customer of Record plan commitments when the plan does not transfer.

25) AT&T's own manager Carl Williams confirms the terms and conditions for section 2.1.8 that the shortfall commitments stay with the plan on a traffic only transfer as Mr Williams asserts AT&T's fraudulent use defense under section 2.2.4 of AT&T's tariff to prohibit the traffic only transfer. November 28th 1995 Statement Leading up to the March 1996 Judge Politan Injunction:

“Exhibit B demonstrates the estimated shortfall for five of these eight plans if all or **substantially all of the locations under the plans are transferred** on December 1st 1995. This figure is the difference between the **annual commitment** and the year to date billing (including a projection of average billing through the month of November.) The result is that if there was no traffic billed under these plans after December 1st 1995, projected shortfall would increase \$13.293 million, resulting in \$33.523 million in total projected shortfall for CCI.

Although any reduced ability is difficult to quantify, AT&T should insist on a deposit in excess of \$13.293 million, representing the increased risk to AT&T plus the increased risk that **CCI would be less able to satisfy any tariffed obligations to AT&T.**

26) AT&T is confirming that under the tariff the annual commitment stays with the plan and this is a tariffed obligation. Judge Politan clearly understood the revenue and time commitments did not transfer. By 1996 in his injunction understood the plans were pre June 17th 1994 shortfall and termination liability immune and AT&T was simply denying plaintiffs its own CT and looking to put plaintiffs out of business.

27) AT&T's 1995 Fraudulent use assertion was **premised** on AT&T suspecting it would be deprived of **shortfall** on CCI's plans. Judge Politan issued an injunction and stated:

To the extent however that AT&T's demand for fifteen million dollars' security is **premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T.** March 1996 Politan Decision (page 19 para 1)

28) AT&T conceded that the FCC could not address fraudulent use as it is a fact based issue. AT&T's August 26, 1996 Comments to the FCC stated here as **Exhibit L**

“Because the Commission must make findings of fact (including on questions of intent and fraud) to resolve this issue, the issue referred to the Commission by the federal district court **cannot be resolved in the context of a Petition for Declaratory Ruling**; it must be resolved in the context of a complaint proceeding **or other adjudication**.”

29) AT&T on page two of its August 26, 1996 FCC Comments again states:

AT&T opposes the Joint Petition for Declaratory Ruling because the material facts relevant to the requested rulings are disputed.

AT&T's position to the FCC August 26, 1996 –**Here as EXHIBIT N**

ARGUMENT

1. THE COMMISSION **MAY NOT ISSUE** THE REQUESTED DECLARATORY RULINGS BECAUSE MATERIAL ISSUES OF FACT EXIST **AS TO EACH REQUESTED RULING**

The primary jurisdiction referral was not on the narrow issues identified in the four requested rulings set out in Joint Petition for Declaratory Rulings:⁷ whether or not Section 2.1.8 of AT&T's Tariff F.C.C. No. 2, "or any other provision of AT&T's Tariff

The four requested rulings are: (1) "At the time of the attempted transfer... neither Section 2.1.8 of AT&T's Tariff F.C.C. No. 2, nor any other provision of AT&T's Tariff F.C.C. No. 2" prohibited the transfer of the traffic without the transfer of the underlying plans or to require a deposit; (2) "Under standard tariffing law, principles, policies, and as required by the plain language of Section 203 of the Act, AT&T had no legal basis and could not have effectively tariffed any changes or additions to Section 2.1.8 or any other provisions of AT&T's Tariff F.C.C. No. 2, subsequent to January 1995, which could have substantially affected CCI's rights to assign the traffic under its CTSP II plans to PSE in January, 1995;" (3) "Since neither Section 2.1.8 of AT&T's Tariff F.C.C. No. 2, nor any other provision of AT&T's Tariff F.C.C. No. 2" prohibited the transfer of the traffic without the transfer of the underlying plans, AT&T had no legal basis for doing so; and (4) "Refusal to accept such transfer" was in violation of Sections 201, 202 and 203 of the Act and Rule 61.54(j) of the Commission's Rules.

30) AT&T's position is that the NJFDC must handle all these issues not the FCC. Additionally AT&T concedes that just not section 2.1.8 must be considered for traffic only transfers but section 3.3.1.Q4 (delete and add)---as AT&T concedes this 1st declaratory ruling request by plaintiffs must also be resolved: "nor any other provision of AT&T's Tariff F.C.C. No. 2" prohibited the transfer of the traffic without the transfer of the underlying plans."

31) This includes both the Inga to PSE traffic only transfer that would not require a deposit requirement and the CCI-PSE traffic only transfer that AT&T initially asked for a deposit requirement on the Inga to CCI plan transfer but that was later resolved by the May 1995 NJFDC decision.

32) AT&T provides the appropriate law to advise the FCC that it should not rule on page 10 of its August 26, 1996 FCC Comments **Here as Exhibit O**

The Commission Cannot Grant Declaratory Relief Where There Is A Material Issue Of Fact In Dispute

Declaratory relief under Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, cannot be granted by the Commission "**where, as in the present case,** all relevant facts are not clearly developed and essentially undisputed." In the Matter of Cascade Utilities, 8 FCC Red 781, 782 (1993) citing, to Aeronautical Radio, Inc., 5 FCC Red 2516 (Com. Car. Bur. 1990) and American Network, Inc., 4 FCC Red 550, 551 (Com. Car. Bur. 1989).

33) AT&T sole defense is fraudulent use and AT&T's statement is correct the FCC could only decide whether or not the fraudulent use section 2.2.4 could be used to deny a proper 2.1.8 transfer due to the size of the transfer. The FCC simply ruled that even if AT&T could use the fraudulent use provision it used it in an illegal manner and thus can't rely upon 2.2.4 to stop the 2.1.8 transfer. However Judge Politan in 1996 determined AT&T's fraudulent use defense had no merit to begin with:

34) Judge Politan had already determined by his Courts March 1996 Decision that the plans were pre June 17, 1994 ordered and were immune from shortfall. Obviously the June 17th 1994 exemption is prior to the Jan 1995 traffic only transfers from both Inga to PSE and CCI to PSE. So AT&T knew at the time of the traffic only transfers it had no reason to suspect shortfall.

35) AT&T conceded that 2.1.8 was strictly adhered to and tried to retroactively change 2.1.8 by filing Tr8179 and the FCC denied AT&T. AT&T's demand for a security deposits **premised** on the dangers of shortfalls is a **direct attack on the merits of AT&T's use of the fraudulent use provision**, as it was **premised** on suspecting shortfalls.

36) By 1996 there was **no** controversy or uncertainty that the FCC needed to resolve for the NJFDC regarding fraudulent use. By 1996 Judge Politan clearly understood CCI's plans were pre June 17th 1994 grandfathered and thus immune from shortfall charges:

Judge Politan: "Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T.** March 1996 Politan Decision (page 19 para 1)

B) Judge Politan: “Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff.” May 1995 NJFDC Decision pg. 11

C) Judge Politan: “In answer to the court's questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.” May 1995 NJFDC Decision pg. 24

37) AT&T has claimed the Jan 23th 1995 letter was a proper 15 day denial of the CCI to PSE traffic only transfer. However AT&T chose to ignore the Inga to PSE traffic only transfer completely –**never denying it within the 15 days.** By law the transfer must go through.

38) During this period AT&T was still arguing that CCI was still not the plan holder when the Inga Companies initially tried to transfer its plans to CCI; because CCI had not put up the \$13,500,000 security deposit. The security deposit issue did not get resolved until the May 19, 1995 NJFDC Judge Politan Decision so plaintiffs ordered the direct Inga to PSE traffic only transfer.

39) FCC 2003 Decision Footnote 18 page 3

Combined Companies, Inc., etc. and Winback & Conserve Program, Inc., et al. v. AT&T Corp., Civil Action No. 95-908, Preliminary Injunction (filed May 19, 1995) (*First Preliminary Injunction*); *see generally First District Court Opinion*. The district court found that section 2.1.8 of AT&T's tariff, which governed the transfer of plans, was not conditioned upon the provision of a deposit and that **the Inga Companies had otherwise met the requirements of section 2.1.8.** *See First District Court Opinion* at 20-21; *accord* 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item must be specifically referred to in connection with such item).

40) FCC 2003 Decision Footnote 19 page 3

Because the district court ultimately found that AT&T's refusal to accept the transfer from the Inga Companies to CCI was improper and ordered AT&T to accept it, we assume the legitimacy of that transfer, retroactive to the time when it should have occurred.

41) Plaintiffs have provided significant comments showing AT&T did not properly deny the CCI to PSE traffic only transfer. AT&T initially claimed to the DC Circuit that on Jan 27th 1995 it denied the CCI-PSE traffic only transfer. AT&T then changed its tune when it knew it had not denied it on Jan 27th 1995 and instead claimed that a Jan 23 1995 letter was the denial of the CCI-PSE traffic only transfer; however that Jan 23, 1995 letter was a late denial of the Inga to CCI plan transfer.

42) **AT&T never denied the direct Inga to PSE traffic only transfer within the 15 days.** The failure to meet the 15 days precludes all AT&T defenses. Therefore if the NJFDC still does not understand that AT&T's only defense was fraudulent use and that defense was denied by Judge Politan by 1996 as having no merit ----then FCC can also rule that the direct Inga to PSE traffic only transfer in which AT&T has presented zero evidence of denying the Inga-PSE traffic only transfer within 15 days, would thus be recognized as a permissible traffic only non-plan transfer.

43) Whether the Commission determines that the Inga-PSE traffic only transfer could be done via 2.1.8 as agreed by AT&T and plaintiffs or by delete and add scenario under 3.3.1.Q-bullet 4 either way is acceptable. AT&T itself conceded that in its comments to the FCC on August 26, 1996 **here as Exhibit L**

Those rulings are phrased in terms of whether or not Section 2.1.8
"or any other provision of AT&Ts Tariff F.C.C. No. 2"
prohibited the transfer.

44) AT&T simply chose not to process the Inga to PSE transfer and instead continued to argue over the CCI-PSE transfer due to security deposits. CCI, Inga Companies, and PSE removed AT&T's deposit argument from the equation by doing a direct Inga to PSE transfer and still AT&T refused to transfer the traffic. AT&T confirmed receipt but simply ignored the Inga Companies to PSE traffic only order.

45) It also should be noted that the Inga Companies had full Letter of Agency status on all end-user records. So there was no need to get another signature under the Delete and Add 3.3.1.Q-4 account movement method or direct 2.1.8 transfer.

46) The Inga Companies could delete the accounts and simultaneously submit a new order to join PSE's CT-516. It would have been some extra paperwork but would have accomplished the same goal as the direct 2.1.8 transfer. The benefit to the 3.3.1.Q-4 movement would have been it would not result in the tariffed \$50 per location record change charge when transferring account locations under 2.1.8. There was no cost to delete and add end-user accounts using section 3.3.1Q-4.

47) AT&T has never argued that 3.3.1Q-4 would not be a permissible way to move traffic. In fact its counsel Charles Fash and ordering processing manager Joyce Suek advised petitioners that the delete and add account movement scenario was permissible. AT&T has zero evidence of denying the Inga to PSE traffic only transfer within 15 days and thus by law that transfer should have been processed under either 2.1.8 or 3.3.1Q-4.

48) There was never a controversy under section 2.1.8 in 1995. AT&T and plaintiffs agreed that PSE does not assume the revenue and time commitment whether the Inga Companies or CCI was transferring the traffic to PSE. AT&T's only defense to stop the traffic only transfers ordered was section 2.2.4 fraudulent use. AT&T's position that its Jan 23rd 1995 letter was a denial of the CCI to PSE transfer was a proper denial but it was not.

49) In any event AT&T never did deny the Inga to PSE traffic only transfer within 15 days. Judge Politan did not care whether 2.1.8 or 3.3.1Q-4--- delete and add method was used. His Court in 1995 simply did not see the "any number" language in section 2.1.8 that AT&T also pointed out to the DC Circuit this exact phrase that means any number of locations can transfer--i.e. traffic only transfer.

50) Judge Politan by March 1996 clearly understood that AT&T's only defense of fraudulent use which was premised on the danger of not collecting revenue commitments for service that would not even be rendered by AT&T was "not properly substantiated." The case is over given the fact that Judge Politan's 1996 determination that the plans were June 17th 1994 immune meant AT&T had zero merit for raising the fraudulent use defense under 2.2.4 to stop a 2.1.8 or a 3.3.1Q-4 transfer in the first place---and Judge Politan did this w/o knowing about the Oct 23, 1995 FCC Order.

51) The FCC understood that fraudulent use is a fact based issue ---a judgment call---that it does not get involved in as its only task is to interpret tariff language. Given the fact the Judge Politan's determination that the plans were June 17th 1994 immune and that is the Law of the Case, means AT&T's sole defense of fraudulent use has already been denied as of the March 1996 NJFDC Decision. If Judge Wigenton does not accept Judge Politan's determination that the plans were pre June 17 1994 immune then the FCC 2003 Decision advises the District Court to handle the duration of the June 17th 1994 grandfather exemption.

52) Even if the FCC were to determine that section 2.2.4 fraudulent use allows AT&T to prohibit a 2.1.8 or a 3.3.1.Q-4 transfer from either CCI or Inga Companies to PSE, AT&T still loses as it has already been established that the fraudulent use defense had no merit as the plans were pre June 17th 1994 immune until 2004 as indicated under the tariff. By 2004 the entire revenue and commitment would have been ameliorated.

53) The mere fact that that the FCC states there is argument over the duration of the pre June 17 1994 immunity means that by law it must be determined in plaintiff's favor. The established rule is that ambiguous tariffs are construed in favor of the customer. *In the Matter of The Associated Press*, 72 FCC 2d 760 (1979), the Commission held:

In interpreting tariff language we believe it appropriate to refer to our decision in *Commodity News Services, Inc.*, 29 FCC 1208 (Initial Decision), *aff'd*, 29 FCC 1205 (1960), which states the rather well settled rule as follows:

Tariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls, for the user cannot be charged with knowledge of such intent or with the carrier's canon of construction.... However, if there is ambiguity in tariffs they should be **construed against the framer and favorably to users** . . . 29 FCC at 1213. Therefore, AT&T's intent in promulgating this regulation is irrelevant (emphasis added).

54) Petitioners submit that their rights under Section 2.1.8 are determined by the plain language of Section 2.1.8, and that Section 2.1.8 does not contain an exception allowing AT&T to refuse to make the transfers based on its perception of a reseller's business motivation. (If Section 2.1.8 did contain an exception based on the subjective perception of AT&T, it would violate 47

C.F.R. § 61.54 (j)'s requirement that "[t]he general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely.")

Section 2.2.4 By Its Own Terms Does Not Apply Under These Circumstances

55) Section 2.2.4, by its plain language, prohibits the actual theft of WATS service by fraudulent means. It has no application to a customer's business disputes -- essentially contract disputes -- with AT&T, and it would be unconscionable to permit AT&T to use a quasi-criminal provision to force small competitors into accepting its own interpretation of every term of its tariff.

56) Moreover, continuing its shameful efforts to fool the Commission through manipulating its tariff provisions, AT&T, in its 1996 opposition, quotes the version of Section 2.2.4 which became effective June 15, 1996. AT&T made prospective changes to 2.2.4 after Judge Politan's May 1995 Decision.

57) The applicable version of Section 2.2.4 is of course the one in effect in January 1995 when Petitioners attempted to make the transfers at issue. The applicable version is not the same as the one quoted by AT&T in its Opposition filed at the FCC in 1996. Section 2.1.8 of AT&T's Tariff F.C.C. No. 2 Is Not Conditioned on Nor Affected by Section 2.2.4.

58) Section 2.1.8 does not cross-reference Section 2.2.4. Pursuant to 47 C.F.R. § 61.54(j), "[a] special rule, regulation, exception or condition affecting a particular item or rate must be specifically referred to in connection with such item or rate."

59) AT&T argued to the FCC in 1996 that "Section 2.1.8 does not require it to transfer traffic without the plans "until [it] was satisfied that the transfer was not designed to avoid shortfall payments in a scheme designed to defraud [it]."

60) In 1996 AT&T was only asserting fraudulent use and AT&T conceded to the Commission that CCI maintains its plan commitments but by 2006 intentionally deceived Judge Bassler and in 2014 intentionally deceived Judge Wigenton that obligations transfer on a traffic only transfer.

"[i]n the proceedings in the District Court, AT&T proffered evidence clearly demonstrating the reasonableness of its belief that the transfer of the traffic but not the underlying plans was with the intent to avoid the payment of AT&T's tariffed shortfall and termination charges."

61) NJFDC Judge Politan understood the plan obligations don't transfer and stated in his Courts March 5th 1996 Order that the parties could "revisit the issue of security at any time in the future upon the filing of appropriate papers supported by **credible documentary or testimonial evidence** (emphasis added)." March 5, 1996 Order at 18-20

62) The fact is AT&T has never provided tariff evidence that the plans were not pre June 17, 1994 immune. That's why AT&T decided to not pursue the \$80 million in bogus shortfall charges against CCI when AT&T settled with CCI while also paying CCI substantial cash.

63) AT&T also ignores the fact that Shortfall Charges have been attacked as being unreasonable charges in violation of 47 U.S.C. § 201, and thus illegal; and that, additionally, AT&T's Tariff F.C.C. No. 2 Section 2.5.7 would preclude collection of such charges from Petitioners in any event.

64) Furthermore shortfall charges tariffed by AT&T are unreasonable and so violate 47 U.S.C. § 201. It is clear on its face that these charges are unreasonable and violate 47 U.S.C. § 201. In the RCA American designation order, the Commission noted that customers had protested the provisions of the tariff which for "cancelling prematurely, [they] would be liable for all charges remaining in the balance of the term."

65) The customers' protests of these provisions "center[ed] on the inherent unreasonableness in binding a customer to a service term -- without similarly binding the carrier -- in a manner [that is] unrelated to the carrier's legitimate interest in assuring a reasonable return on its investment."

66) Further, it was pointed out RCA stood to "enjoy a double recovery for each premature cancellation..." as RCA was "not obligated to deduct any payments obtained from the replacement customer from the charges owed by the first customer." It was further argued that this type of cancellation provision "effectively hampers competition ... since the cost of moving to a new ... carrier is greatly increased." 84 FCC 2d 353, ¶ 26-27.

67) In ultimately rejecting RCA's cancellation charges, the Commission noted that they were based on a methodology that would unjustly "**enrich the carrier for services not rendered**." It was further noted that such a scheme went beyond "reimbursing the carrier for administration and other non-recoverable costs resulting from premature ... cancellation"

68) In the Matter of RCA American Communications, Inc., 86 FCC2d 1197, ¶ 21. The circumstances in this case make AT&T's Shortfall Charges eminently less defensible as the plans were immune from shortfall as they were pre June 17th 1994 ordered as Judge Politan determined.

69) The FCC 2007 Order properly determined that there was no controversy under 2.1.8 in 1995 and all of AT&T's bogus defenses in which no evidence was ever presented are precluded.

70) The only defense in 1995 was fraudulent use (2.2.4) and by 1996 Judge Politan properly determined it had no merit.

FCC BRIEF TO DC CIRCUIT

71) The FCC was not asked to interpret the obligation allocation under 2.1.8 as there was no controversy or uncertainty between the parties in 1995. However a review of the FCC's brief filed with the DC. Circuit makes it abundantly clear that the FCC interpreted 2.1.8 so as not to require a transfer of the S&T obligations in a partial traffic transfer. The FCC wrote:

More fundamentally, however, AT&T's argument collapses, because it incorrectly presumes that, apart from the transferee's assumption of liabilities (which occurs under a transfer of plans, but not a transfer of traffic), a transfer of traffic and a transfer of plans yields identical benefits and burdens to AT&T and its customers. That is not the case. Where there is a wholesale transfer of plans pursuant to section 2.1.8 (as in the Inga-to-CCI transactions), the transferee "step[s] into the shoes of the [transferor]" and *replaces* the transferor as the party liable for any *future* purchases of service. Order, para. 9 (JA 7) The transferor does remain liable for "outstanding indebtedness" and the "unexpired portion of any applicable minimum payment" obligation existing at the time of the transfer. See order n46 (JA 6) (quoting section 2.1.8). By contrast, when only traffic is moved, the party reducing its traffic (in this case CCI) "would continue to subscribe to its existing CSTPII plans, and the totality of the reciprocal obligations between that party and AT&T under those CSTPII plans would remain in effect, both with respect to service that already had been purchased at the time the traffic was moved *and* with respect to any future service taken under the plans. Order, para 9 (JA 7). Thus, each method of structuring the transaction presents distinct benefits and obligations for both AT&T and the customer, and the Commission's reading gives meaning to section 2.1.8. (emphasis added)

72) It is clear that the FCC's statement "gives meaning to section 2.1.8" that the traffic only transaction under 2.1.8 only makes sense if the S&T obligations remain with the transferor. Indeed, elsewhere in its brief, the FCC specifically states that it interpreted 2.1.8 in rejecting AT&T's position that S&T obligations transfer:

In arriving at the conclusion that section 2.1.8 of Tariff No. 2 did not prohibit the requests made by CCI and PSE to transfer traffic, the Commission rejected AT&T's contention that section 2.1.8 did not permit the transfer of traffic without a plan unless the transferee assumed the original customers liability. Id. at para. 9 (JA 6-8) The Commission stressed, however, that even with the transfer of traffic, CCI still would have to meet its tariffed commitments." (emphasis added)

73) And, once again, the FCC confirms that S&T obligations remain with plaintiffs' plans:

The commission concluded that CCI's obligations remained under the CSTPII and RVPP plans, and that "AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question." (emphasis added)

* * *

Section 2.1.8 states that a Customer may not transfer WATS, including any associated telephone numbers(s)" to a new customer unless the new customer confirms "in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment." The Commission explained that AT&T had acknowledged in its comments that the subject of that limitation--WATS--referred to the *plans themselves*. Order, para.9 (JA 6); see AT&T opposition at 10 (JA 249) (in this case the relevant WATS services [to which section 2.1.8's transfer provisions apply] are the CSTPII plans". The Commission concluded--- consistent with AT&T's acknowledgement--that the assumption -of -obligations limitation applied to "the wholesale transfer of "WATS" and "did not preclude or otherwise govern... the movement of end-user traffic from one aggregator to another, as CCI and PSE sought to effect in this case." Order, para. 9 (JA 6-7)

74) The 2007 FCC Order determined that the Judge Bassler issue of which obligations transfers did not expand the scope of the Third Circuit referral on fraudulent use. The fact is there was never a controversy under 2.1.8. Both parties agreed that Customer of Record obligations (Shortfall and termination) only transfer when the plan is transferred. The FCC was not asked to interpret obligation allocation as it was not a controversy. However the FCC has already clearly interpreted it anyway. Additionally AT&T raising a defense in 2006 as to which obligations transfer under 2.1.8 would be barred by the 15 days statute of limitations within 2.1.8.

AT&T Senior Counsel Certified to the District Court that the FCC Interpreted And Advised AT&T That Adding The Transferring Of S&T Obligations On Traffic Transfers Under 2.1.8 Was A Substantive Change

75) The following information amply demonstrates that AT&T knew S&T obligations do not transfer on partial traffic transfers. The parties as well as the FCC agree on this. Over a month after plaintiffs traffic only transfer AT&T pleaded with the FCC to amend its tariff on a retroactive basis and filed on February 16, 1995 Tr8179 that would mandate that when

substantial locations were transferred the plan automatically transfers so as to force the plan obligations to transfer.

“If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers associated with the term plan or Contract Tariff (based on the past 12 months of usage) would **not meet the usage and/or revenue commitment of the volume or term plan** or Contract Tariff, the transfer will be deemed a transfer of the associated volume or term plan or Contract Tariff to such other Customer(s), and may only be completed in accordance with this Section. If the transfer of service is to a group of two or more other Customers, the new Customer for the volume or term plan or contract tariff will be that group. Each customer in the group will be jointly and severally liable for all of the obligations associated with the transferred service and volume or term plan or Contract Tariff.

76) The converse of course is that if the transfer did not result in substantially all the traffic being transferred the usage and/or revenue commitment of the volume or term plan **remained with the transferor**. If under 2.1.8 plan obligations transfer without the plan then AT&T would not have required the plan to transfer in or to make the plan obligations transfer. AT&T would have only insisted that the obligations transfer if that could be done—but it couldn’t.

77) Section 2.1.8 does not have a sliding scale of which obligations transfer based upon how much traffic transfers. It is either a traffic only transfer or a plan transfer. Anything less than 100% of the accounts transferring is a traffic only transfer. It is either you’re pregnant or you are not pregnant—not close enough horseshoes.

78) The following certified statements were made to NJFDC Judge Politan by AT&T counsel Richard Meade and therefore there was no controversy or uncertainty regarding which obligations transfer in 1995 and thus there was no need for the FCC to interpret which obligations transfer **as all parties agreed** the plan obligations stay with the non-transferred plan. AT&T’s sole defense was 2.2.4 fraudulent use which Judge Politan determined had no merit because the plans were pre June 17th 1994 grandfathered from shortfall.

79) AT&T counsel Meade certifies, (1) that S&T obligations remain with CSTPII plans; (2) that AT&T was advised by the FCC that it was making substantive changes Tr8179 which would not mandate that the traffic transfer be treated as a plan transfer and (3) an admission that any new changes made under Tr9229 by adding security deposits against potential shortfall would be prospective only and have no effect on traffic transfer at hand.

Mr. Meade testified:

Under CCI's requested location transfer, CCI would have nominally remained the customer of Record for the CSTPII's. But by transferring revenue-producing accounts, CCI would apparently have rendered itself an asset less shell unable to either fulfill its commitments or to pay its shortfall or termination charges."

80) AT&T's rhetoric that CCI would be an asset less shell is false because the plans were pre June 17th 1994 immune as determined by Judge Politan, but there is no longer an issue due to AT&T's illegal fraudulent use remedy. Even if the FCC had decided that under the tariff the 2.2.4 fraudulent use provision could prevent a 2.1.8 or a 3.3.1.Q-4 delete and add transfer the buck still stops with the District Court that has already determined the plans were immune and thus determined in March 1996 that AT&T sole defense of fraudulent use 2.2.4 had no merit. The tariff indicates the CSTPII/RVPP Option B plans were shortfall immune till Jan 2004.

81) Meade testified further regarding Tr. 8179

The FCC was concerned that the modified language in Section 2.1.8(c) would have had a broader effect than was needed to achieve AT&T's specific purpose, which was simply to clarify its existing right to prevent a location transfer intended to avoid payment of charges, and **so would constitute a substantive tariff change.**

82) Thus, AT&T's counsel admits that the FCC in AT&T's 1995 Substantive Cause Pleading decided against AT&T. All substantive changes are prospective only and thus would not affect the traffic transfer at hand.

Other Meade statements are helpful:

"I and others at AT&T had a number of discussions with the FCC concerning Transmittal No. 8179. In the course of those discussions we explored alternative tariff language that would address more directly the problem (the separation of assets and liabilities) that give rise to the initial filing without requiring a determination as to whether the parties to the transfer intended to avoid payment of charges."

In particular we discussed an alternative approach by which AT&T's concern would be met by requiring a deposit (either in cash or by letter of credit) in the amount of the projected shortfall charge that would apply as a result of the location transfer. The FCC was receptive to this approach, but noted that it would represent a significant change from the pending filing and that it would be appropriate to make that change as a new transmittal, thereby providing interested parties with a new opportunity to state

objections. The Commission asked that AT&T withdraw Transmittal 8179 and submit the new approach as a new filing.

Over the summer, AT&T discussed the contemplated across-the-board tariff filing with representatives of a reseller trade group, the Telecommunications Reseller Association ("TRA") which includes resellers that will be affected by and interested in this package. Revisions were made in response to the reseller input. The contemplated changes were discussed further with the FCC in August and September, and further revisions made. All of these revisions were circulated among the many affected product management groups within AT&T for approval. The time between the withdrawal of Transmittal No. 8179 in June and the filing of transmittal No. 9229 in October was a result of AT&T's desire to solicit and respond to input from resellers and the FCC, and the need to obtain approval from the many different product management groups affected by the changes.

On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the CCI-PSE transfer--- the segregation of assets (locations) from liabilities (plan commitments) --- in the following manner.

83) AT&T then explains within paragraph 15 that it added Deposit Requirements to 2.1.8

The Deposit for Shortfall Charges included in Transmittal No. 9229 is a new concept that meets AT&T's business concern more directly, without addressing the question of intent. Because this is new, it will apply only to newly ordered term plans, and so would not be determinative of the issue presented on the CCI/PSE transfer.

84) Thus, despite AT&T's current stance that it was merely making "clearer" what was supposedly already clear and encompassed within 2.1.8, Meade's testimony clearly indicates that many new changes were being discussed with many people and none would affect plaintiffs as all substantive tariff changes are prospective. The simple fact is that counsel admitted that the FCC advised AT&T that the changes were substantive and, thus, AT&T lost its Substantial Cause Pleading to retroactively change the tariff.

85) The fact is on June 2, 1995 Transmittal 8179 was withdrawn in the face of adverse determination by the FCC and on October 26, 1995, AT&T filed Tr9229 which became the November 1995 prospective tariff change to add security deposits against potential shortfall. This was further conclusive tariff evidence that 2.2.8 allowed traffic only transfers and the revenue and time commitment stay with the non-transferred plan.

86) AT&T Counsel Admitted To The Third Circuit What The FCC's "Final Position" Was In Reference AT&T Substantial Cause Pleadings- Agreeing with fellow Counsel Richard Meade.

87) During oral argument in 1997 (well after AT&T's Substantial Cause Pleadings and proposed retroactive Transmittal 8179) AT&T's counsel admitted under continued questioning on this subject from the Third Circuit that the FCC's final determination of its Substantial Cause Pleading was that forcing a plan to transfer so as to force the plan obligations to transfer was more than a mere codification.

Third Circuit Oral Pg 43:

Carpenter: We thought the issue would be decided. The FCC asked us to withdraw the complaint because the FCC thought we had done **more** in the tariff language **than codify** what the tariff already meant

88) The issue of whether AT&T could subjectively determine that a traffic only transfer was a plan transfer was decided when AT&T lost its Substantial Cause Pleading as AT&T counsel admits herein.

**AT&T Attempted To Cover Up The Fact That It Lost
The Substantial Cause Pleading To the FCC**

89) In its May 22' 2006 brief to Judge Bassler, AT&T stated:

AT&T explicitly and consistently maintained that the proposed change was a clarification. That is **what it told the FCC** when it filed the proposed revision, (see letter Richard Meade, AT&T Senior Attorney to David Nall, FCC Deputy Division Chief. **(Feb. 16th, 1995)** at 2, Brown Supp. Aff., Ex. B), **and what it told this Court.** (emphasis added)

90) The fact that AT&T started with its "clarification assertion" in its Substantial Cause Pleading in February 1995 and revived it in June 2005 before Judge Bassler's Court does not mean AT&T has always maintained this bogus assertion.

91) As AT&T counsel Mr. Meade certified in Nov 1995 and AT&T Counsel Carpenter stated in 1997 AT&T lost its' Tr. 8179 Substantial Cause Pleading with the FCC on this clarification Tr8179 Substantive Cause Pleading in 1995. Therefore, it was impossible for AT&T to have explicitly and consistently maintained the same nonsense before the FCC.

92) The conspicuously absent, non-maintained bogus position further substantiates that the FCC interpreted and AT&T lost its Substantial Cause Pleading because AT&T knew it couldn't argue it before the FCC. Even if AT&T asserted it the FCC already decided it was bogus in 1995. It was simply part of the intentional series of misrepresentations on NJFDC Judge Bassler. Simply put the FCC has already advised AT&T that it can't force a plan transfer so as to force the plan commitments to transfer simply based upon the quantity of locations being transferred.

AT&T Counsel Confirms S&T Obligations Do Not Transfer On Traffic Transfers And Sheds Light On AT&T's Strategy To Curtail Access To Deeper Discount Plans

93) On July 7, 1995, AT&T counsel Charles Fash sent a letter to plaintiff's counsel and a competitor aggregator, Darren B Swain (DBA US Communications), that was attempting to transfer traffic under 2.1.8 to one of Plaintiffs' plans.

Fash writes in reference to 2.1.8 transfers:

It appears to AT&T at this juncture that transfer of all but two of the locations as requested by Mr. Swain would render not only the plan, but Darren B. Swain, Inc., an empty shell devoid of assets with which to pay tariffed charges "associated with the plan".

94) Mr. Fash is acknowledging that S&T obligations stay with the customers' plan, under 2.1.8, which Judge Politan, the FCC, AT&T and plaintiffs all agreed with in 1995. That is why Judge Politan did not refer the question of which obligations transfer. AT&T counsel repeatedly stated to Judge Politan in 1995 that revenue and time commitments do not transfer and AT&T had a right under 2.2.4 to deny the transfer based upon suspecting that it would be deprived of collecting shortfall. Judge Politan was ready to scream if he heard it again. **"The Court: I know all these facts, Mr Whitmer. I really do. I swear to God."**

95) AT&T's position today is that 2.1.8 does allow traffic only to transfer but in 2006 created a new defense that "all obligations" transfer which the FCC 2007 Order denied. AT&T also endorses 3.3.1.Q bullet 4 "delete and add" position and neither account movement method would result in shortfall and termination obligations being transferred to the new customer.

96) Common sense: Why would plan obligations transfer when traffic is transferred under section 2.1.8 when AT&T concedes plan obligations do not transfer using 3.3.1.Q4 (delete and add?) If there were a difference in which obligations transfer between the two tariff sections than any customer that is receiving accounts would say..... don't use 2.1.8 use 3.3.1Q4 because we don't want to be responsible for paying for bad debt on accounts that are not even transferred to us. Yes under AT&T's 2006 created defense the new customer assumes all

obligations on a traffic only transfer and incredibly the new customer must be liable for bad debt on accounts it doesn't even have transferred to it. This is why AT&T has no evidence—it doesn't exist. It was simply an intentional fraud on Judge Bassler then the FCC and then Judge Wigenton. AT&T counsels intentionally engaged in a fraud on the NJFDC and the FCC.

97) AT&T's "all obligations" 2006 minted defense was simply an intentional fraud on Judge Bassler that was carried to the FCC in 2006 and then used on Judge Wigenton in 2014. The FCC 2007 Order killed AT&T's 2.1.8 "all obligations" intentional fraud within a month after Judge Bassler referred it to the FCC.

98) Section 2.1.8 traffic transfers allowed AT&T customers the option to move accounts from 28% to 66% with one AT&T Transfer of Service Form (TSA) form. AT&T's endorsed 3.3.1.Q4 (delete and add) option required aggregators to obtain forms signed by each end-user if the aggregator did not have a Letter of Agency for each end-user like Plaintiffs had.

99) AT&T extolled to the DC Circuit all the wonderful benefits of transferring traffic using Section 2.1.8; as plaintiffs attempted, and which the D.C. Circuit Decision reiterated; D.C. Circuit, pg. 8-9 last line:

These include guarantees against service interruptions and the loss of particular 800 numbers, as well as exemption from a requirement that resellers obtain their end-users' written consent prior to the transaction. See AT&T Br. at 21-23. (emphasis added)

100) The reason why AT&T is correct that no consent was needed prior to the transfer was that AT&T required all aggregators to obtain for each end-user location--- Letters of Agency when initially signing up an account or prior to using 2.1.8—which plaintiffs had obtained. AT&T did this to restrict the number of accounts that plaintiffs could enroll, as AT&T was aware that getting full agency from businesses to control their number was a much tougher sell.

101) Therefore AT&T was correct that consent was not needed at the time of the 2.1.8 transfer as **FULL NO RESTRICTION AGENCY** had already been obtained prior to a traffic only transfer. This is no controversy or uncertainty. If full agency was in place either the accounts could be moved via 2.1.8 or 3.3.1Q4. If there was no agency in place the accounts could still move but they needed to be deleted by CCI or Inga and signed into PSE's CT-516 plan. In any event the accounts could move without the plan under FCC Tariff No2 and the Customer of Record plan obligations stay with the non-transferred plan. Under either transfer method (2.1.8 or 3.3.1Q4) the bad debt on the accounts not transferred remained with the non-transferred plan.

102) AT&T counsel Carpenter stated during DC Circuit oral argument that AT&T only allowed one or two accounts to transfer without S&T obligations; however the tariff shows no cap and the tariff offered Promo 183 in which AT&T waived the \$50 fee per account transferred under 2.1.8 on the first 500 accounts per plan before paying for the balance. Plaintiffs have also provided 6 certifications from other AT&T customers certifying their businesses routinely transferred many accounts.

103) AT&T clearly advised the FCC in 1996 that section 2.1.8 allowed traffic only transfers and CCI must keep its revenue and time commitments and thus be responsible for shortfall and termination liability for failure to meet those Customer of Record plan commitments, and AT&T's only defense was fraudulent use under 2.2.4 which Judge Politan determined in 1996 was meritless.

AT&T August 26, 1996 FCC Comments page 11:

Under the terms of CCI's requested transfer, CCI would have remained the customer of record for the CSTP II Plans; but by transferring its revenue-producing accounts, CCI could render itself an assetless shell, unable to either fulfill **its revenue commitments** to AT&T or pay **its shortfall or termination charges**. Petitioners assert in their Petition that this transfer of traffic (but not the CSTP II Plans) was part of CCI's "business plan" to provide its end users with lower rates pending completion of negotiations with AT&T for a contract tariff similar to Contract Tariff 516 subscribed to by PSE (to which the customer accounts were to be transferred.)

104) Above AT&T is correct the plan had already met its fiscal year revenue commitments and accounts were being parked on PSE and could be taken back with 30 days and the end-users would have enjoyed additional discounts while plaintiffs continued to negotiate its own contract tariff. The plans were pre June 17, 1994 immune so AT&T's bogus speculation of being deprived of shortfall –which by definition is for services never rendered never had merit with Judge Politan as the street smart Judge Politan knew AT&T was looking to put plaintiffs out of business.

105) Even if the FCC agreed with AT&T in Jan 1995's substantial cause pleading position plaintiffs' would still prevail as the transaction would simply be classified as an entire plan transfer and, as per AT&T, would be accorded a 66% discount anyway:

AT&T's brief to FCC May 22nd 2006 Exhibit A pg. 13

First, the purpose articulated by Petitioners did not require the transfer of the traffic without the plan; **it could have been accomplished merely by an agreement with PSE which could have been entered into even with a transfer of the underlying plans**. There is thus no explanation for Petitioners' failure to transfer to PSE the entire plan (including the shortfall and termination obligations) other than the illicit desire to separate the plans' traffic from their liabilities and thereby to evade the shortfall or separation of the plans' assets (revenue stream) from their liabilities (volume commitments) could simply have no other purpose.

106) So the FCC decision is moot from the standpoint that even if plaintiffs were forced to transfer the plan AT&T is still conceding it would have provided the 66% anyway. Plaintiffs

wanted to keep its pre June 17th 1994 grandfathered plans because the plans could be merged into a Contract tariff of its own. Retaining our plan would also mean not having to post millions of dollars of security deposit on a new Contract Tariff.

107) AT&T's statement is clearly acknowledging that S&T do not transfer. However plaintiffs preferred to do a traffic transfer and keep the plans. Hopefully, ambiguity can be cleared by understanding that under 2.1.8 there are only two scenarios: A) Plan Transfer: the accounts, S&T and the plan all transfer. B) Traffic Transfer: The accounts transfer and the CSTPII plan with its associated S&T obligations stay with the plan.

108) There is no option under the tariff in which you can transfer traffic and S&T obligations and keep the plan which is what AT&T created before Judge Bassler in 2006. Plaintiffs AT&T Transfer forms clearly state to do a traffic only transfer. The S&T obligations have to stay with the plan.

Here is Mr. Carpenter again supporting plaintiffs during Third Circuit Oral Argument: Pg 15

We point out in our brief that there's a distinction between transfers of entire plans, transfers of individual end-users locations. That when the "plan" is transferred, "all the obligations" have to go along with it.

and...

When you're transferring all the traffic, you're transferring the plan. That is —and the obligations have to go with it, shortfall and termination liability. (emphasis added)

109) The reason why you have to put mandatory instructional notes on the form is because the same form is used for either plan transfers or traffic transfers.

The D.C Circuit asked AT&T counsel Carpenter (Nov 12th 2004 Tr. Page 12 Line 22) What all obligations meant and correctly declared it varied, depending upon what's transferred:

Mr. Carpenter: Yes, but what it means to assume all the obligations. What obligations apply may vary depending on what's transferred.⁴

⁴ AT&T Further Reply Comments to FCC page 4:

“As AT&T's customers-of-record, Petitioners were responsible for the tariffed shortfall and termination charges. Section 3.3.1.Q of AT&T FCC No 2 See also AT&T Further Comments filed April 2nd 2003 (“AT&T's Further Comments 2003”) at 7-8.

Also See FCC Declaratory Ruling pg 7 footnote 52.

CONCLUSION

110) All parties agreed in 1995 that 2.1.8 allowed traffic only transfers and agreed the revenue and time commitments and their associated liabilities for shortfall and termination do not transfer under 2.1.8. Pursuant to AT&T tariff at 3.3.1.Q bullet 10 the S&T obligations stay with customer.

AT&T Reply brief to DC Circuit:

AT&T never stated below that Section 2.1.8 “applied only to the transfer of the CSTPII Plans’ themselves,” and that the provision is inapplicable to transfers of traffic only—**without the plan and its associated obligations.**

There is no controversy/uncertainty at this point as AT&T has conceded to Judge Bassler that 2.1.8 allows traffic only transfers and the AT&T’s 2006 created “all obligations” defense was determined by the Jan 12th 2007 FCC Order as not expanding the scope of the Third Circuit referral that only deals with the 1995 controversy of fraudulent use---that became a non-controversy in 1996.

111) Notwithstanding that plaintiffs used section 2.1.8 option, Judge Politan and the FCC stated it would be permissible to use 3.3.1.Q bullet 4 (Delete and Add). AT&T’s own counsel also said this was permitted. AT&T counsel Fash claimed that S&T obligations **do not transfer** under 3.3.1Q4 delete and Add.

AT&T sole defense of fraudulent use has already been determined by Judge Politan’s 1996 Court as having no merit because the plans were pre June 17th 1994 immune. There is nothing left for the FCC to do and that is why there has been no FCC decision and there should not be an FCC Decision as there are no pending controversies.

The NJFDC at this point has to simply decide if Judge Politan’s March 5th 1996 determination that the plans were pre June 17, 1994 immune—in which his Court determined without the benefit of knowing of the FCC’s Oct 23, 1995 Order ---is the Law of the Case and the damages phase can commence---OR the NJFDC will need to have hearings on the pre June 17, 1994 issue as well as other plaintiff claims as per the FCC’s 2003 Order at fn 87 and fn 94.

Very truly yours,
Raymond A. Grimes
CC: Client
CC: FCC

EXHIBITS

EXHIBIT A

PUBLIC SERVICE ENTERPRISES
OF PENNSYLVANIA, INC.

January 31, 1994

43 OWEN STREET, FORTY FORT, PA. 18704

P-3
wid.
PHONE 717/257-3161

Mrs. Ann Anderson
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Minneapolis, MN 55402-3233

Sent Via Facsimile and Regular Mail

Dear Ann:

Please find a properly executed AT&T Transfer of Service Agreements (TSA) and Agency Letter to move all the end-user locations, except the 181 account number and 131 lead account number into PSE's CT 516 (CSTP/RVPP Plan ID # 003690) effective January 1, 1995 as per our original order.

The individual plans should each receive their own bill group as listed below:

<u>Plan ID #</u>	<u>Report Group</u>	<u>Report Group Name</u>
001351	038	CCI001
002828	039	CCI002
001583	040	CCI003
003124	041	CCI004
002430	042	CCI005
003663	043	CCI006
003468	044	CCI007
003524	045	CCI008.
002829	046	CCI009

This order is solely to move the locations associated with these plans and not intended to in any way to discontinue the plans.

Sincerely,

Sara B. Pettigrew

Sara B. Pettigrew

\SBP

Enclosures

EXHIBIT B

*One Stop financial, Inc.
Group Discounts, Inc.
National 800 Express, Inc.
800 Discounts, Inc.
Winback - Conserve Program, Inc.* Agency Appointment

(Customer: hereby appoints
COMBINED COMPANIES, INC. ("Agent") as its agent for
the purpose of placing orders with AT&T Corp., pursuant to the following tariff(s):

- AT&T Tariff F.C.C. No. 1 (Section 2.4.1.B.)
- AT&T Tariff F.C.C. No. 2 (Section 2.4.1.B.)
- AT&T Tariff F.C.C. No. 4 (Section 2.5.1.B.)
- AT&T Tariff F.C.C. No. 7 (Section 2.5.1.B.)
- AT&T Tariff F.C.C. No. 9 (Section 2.5.1.B.)
- AT&T Tariff F.C.C. No. 11 (Section 2.5.1.B.)
- AT&T Tariff F.C.C. No. 12 (Section 7.2.18.B.)
- AT&T Tariff F.C.C. No. _____

As provide in the tariff. Customer retains responsibility for compliance with tariff

regulations and any act or omission of Agent, regardless of any limitations Customer may

place on Agent's authority.

*One Stop financial, Inc.
(Customer Legal Name)* *Group Discounts, Inc., 800 Discounts, Inc.,
Winback - Conserve Program, Inc. and National 800 Express*

The following employees of Agent
are authorized to place orders under
this agency appointment:

By: *Alfonse G. INGA*
(Signature)
Alfonse G. INGA
(Typed or Printed Name)
President
(Title)
1/31/95
(Date)

LARRY G. SMITH, JR. PRESIDENT

EXHIBIT C

PUBLIC SERVICE ENTERPRISES
OF PENNSYLVANIA, INC.

45 OWEN STREET, FORTY FORT, PA. 18704

January 16, 1995

P-2
End
CONFIDENTIAL
DO NOT COPY

PHONE 717/287-3161

(and)
PI)

Mr. Larry G. Shipp
Combined Companies, Inc.
7061 W. Commercial Blvd., Suite 5K
Tamarac, FL 33319

Dear Mr. Shipp:

Please accept this letter as confirmation that Public Service Enterprises of Pennsylvania, Inc. (PSE) will provide Combined Companies, Inc. (CCI) with eighty percent (80%) of the earned credit provided PSE on its WIS Report for 800 qualified traffic placed by CCI with PSE on its Contract Tariff No. 516; and a seven percent (7%) credit for traffic placed by CCI on PSE's Contract Tariff No. 435, as appropriate. Any supplemental discount received or claimed for CPP10 is for the account of PSE.

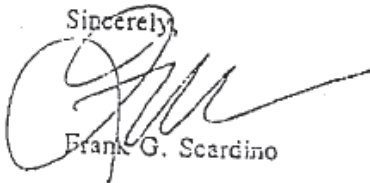
CCI estimates this initial traffic to be approximately \$4,100,000.00 monthly.

CCI's Endusers will be billed by AT&T at the prevailing AT&T Tariff 2 CSTP rates, less twenty three percent (23%) Customer Specific Term Plan (CSTP) discount, and 5.5% Revenue Volume Pricing Plan (RVPP) discount.

CCI will be paid by PSE within ten (10) days of PSE's receipt of its credits associated with Contract Tariff 516 and Contract Tariff 435 respectively.

PSE understands that CCI is not discontinuing these plans, and therefore remains responsible for any commitment associated with them. Accordingly, PSE agrees that upon 30 days written notice from CCI of a AT&T requirement that CCI meet its commitments to AT&T, PSE shall assist CCI in moving any or all of its accounts placed with PSE into any CCI plan CCI shall designate, in order for CCI to meet its commitment to AT&T.

Sincerely,


Frank G. Scardino

Accepted:

Combined Companies, Inc.

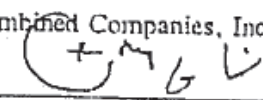

Larry G. Shipp
Its: President

EXHIBIT D

I, WINBACK AND GIBSON PROGRAM, INC. PLAN # 1371 ^(Former Customer) Hereby Request That
AT&T transfer or assign service for Account Number(s) MOVE TO EXCEPT #
To PUBLIC SERVICE ENTERPRISE OF PA, INC. ^(Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment. ^{Date}

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

* TRAFFIC ONLY
MOVE ALL TRAFFIC
EXCEPT

181-000-0018-133

PLAN TO REMAIN
IN EFFECT (PLAN # 1371)

C. M. G. L.
Former Customer (Date) 1/30/95
Authorized Representative LARRY G. SHIP
AGENT
Title
Patrick A. Bello 1/31/95
New Customer (Date)
Authorized Representative
Vice President
Title

I, WINBACK AND CONSERVE PROGRAM, INC. PLAN # 1818 ^{Hereby Request That}
(Former Customer) AT&T transfer or assign service for Account Number(s) All BTAs Except 181-000-0035-588
To PUBLIC SERVICE ENTERPRISE OF PA, INC.
(Customer) 131-112-8222-448

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.
Date

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

TRAFFIC ONLY
MOVE ALL BTAs
EXCEPT

181-000-0035-588
131-112-8222-448

CSTA PLAN # 1818
TO REMAIN IN
EFFECT

CINGULAR 1/30/95
Former Customer (Date)
Authorized Representative LARRY G. SHAW
AGENT

Title
Patrick J. Bell 1/31/95
New Customer (Date)
Authorized Representative
Vice President
Title

I, WINBACK AND CONEWS PROGRAM, INC, TRW # 1583 (Former Customer) Hereby Request That
AT&T transfer or assign service for Account Number(s) MOVE ALL BTNS EXCEPT X6
To PUBLIC SERVICE ENTERPRISE OF PA, INC. (Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

* TRAFFIC ONLY

MOVE ALL BTNS
EXCEPT

181-000-0009-123

131-029-8680-574

KEEP TRW # 1583
IN FACT

GL
Former Customer (Date) 1/30/95
Authorized Representative LARRY G SHIPP
AGENT

Title
Patrick A. Bello 1/31/95
New Customer (Date)
Authorized Representative
President
Title

I, GROUP DISCOUNTS, INC. Plan #3124 .Hereby Request That
(Former Customer)
AT&T transfer or assign service for Account Number(s) MOVE ALL BINS EXCEPT *
To PUBLIC SERVICE ENTERPRISE OF PA, INC.
(Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.
Date

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

* Traffic Only

Move All Accounts

EXCEPT

181-000-0030-144

131-001-0967-310

KEEP C&TP PLAN

#3124 IN THAT.

GMCL
Former Customer (Date) 1/30/95
Authorized Representative LARRY G. STIEP
AGENT
Title
Patrick A. Bello 1/31/95
New Customer (Date)
Authorized Representative
Keri
Title

I. NATIONAL 800 EXPRESS PLAN #2430 (Former Customer) Hereby Request That
AT&T transfer or assign service for Account Number(s) MOVE ALL BTNS EXCEPT *
To PUBLIC SERVICE ENTERPRISES OF PA, INC. (Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

* Traffic Only
MOVE ALL BTNS
EXCEPT
181-000-0052-717
131-096-6048-719
KEEP CSTP II PLAN
#2430 IN FACT

C. G. L.
Former Customer (Date) 1/30/95
Authorized Representative LARRY G SHIPP
AGENT
Title
Patrick A. Bell 1/31/95
New Customer (Date)
Authorized Representative
Vice President
Title

1. 800 DISCOUNTS, INC. PLAN # 3663 Hereby Request That
(Former Customer) AT&T transfer or assign service for Account Number(s) MOVE ALL BINS EXCEPT 1810000142-457
TO PUBLIC SERVICE ENTERPRISES OF PA, INC. 1311340230-284
(Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

TRAFFIC ONLY
MOVE ALL BINS
EXCEPT
181-000-0142-457
131-134-0230-284
CSTD PLAN
#3663 TO REMAIN
INTACT.

C. M. G. L. 1/30/95
Former Customer (Date)
Authorized Representative LARRY G. STICK
Asst
Title
Patrick A. Bello 1/31/95
New Customer (Date)
Authorized Representative
Vice President
Title

Attention Requirement

I, 800 DISCOUNTS, INC. PLAN ID # 3468 (Former Customer) .Hereby Request That
AT&T transfer or assign service for Account Number(s) MOVE ALL BTNS EXCEPT *
To PUBLIC SERVICE ENTERPRISES OF PA, INC. (Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

* TRAFFIC ONLY
MOVE ALL BTNS
EXCEPT
1-81-000-0091740
131-123-6023-035

CSTP PLAN # 3468
REMAINS IN EFFECT

CMGL
Former Customer (Date) 1/30/95
Authorized Representative LENN G. STIER
AGENT
Title
Patrick A. Bello 1/31/95
New Customer (Date)
Authorized Representative
Vice President
Title

I, WINBACK AND CONSERVE PROGRAM INC PLAN #3524 [#] Hereby Request That
(Former Customer)
AT&T transfer or assign service for Account Number(s) ALL BTNS EXCEPT 30
To PUBLIC SERVICE ENTERPRISES OF PA, INC.
(Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

TRAFFIC ONLY
MAKE ALL BTNS EXCEPT

181-000-0105 264
131-126-6569-385

KEEP CSTR II PLAN
IN FACT (PLAN #3524)

C * H G L
Former Customer (Date) 1/30/95
Authorized Representative LARRY G SHIPP
ASST
Title
Patrick A. Bell 1/31/95
New Customer (Date)
Authorized Representative
Rice President
Title

I, WINDALK AND CONSERVE PROGRAM, INC. Plan # 2819 [#] Hereby Request That
(Former Customer)
AT&T transfer or assign service for Account Number(s) MOVE ALL BTN EXCEPT *
To PUBLIC SERVICE ENTERPRISE OF PA, INC.
(Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JANUARY 30, 1995 or AT&T's agreement in writing of the transfer or assignment.
Date

When a transfer or assignment occurs, a Record Change Only Charge applies.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

* TRAFFIC ONLY
MOVE ALL BTNs EXCEPT
181-000-0099 WJ9
131-112-8057-823
KEEP CSTA II PLAN
2819

C-6 L
Former Customer (Date) 1/30/95
Authorized Representative LARRY G STREE
AGENT
Title
Patrick A. Bell 1/31/95
New Customer (Date)
Authorized Representative
Keri Prudent
Title

EXHIBIT E

Combined Companies, Inc.

December 17, 1994

Mr. Tom Jones
AT&T
227 West Monroe
Chicago, IL 60606

Confidential & Proprietary

Delivered Via Facsimile

Dear Tom:

Thank you for the update on Friday. I am glad that it appears we are making progress and that "there is real interest" from AT&T in our proposal.

As requested, find following an Executive Summary (or overview) of our business operations as they might relate to our proposed Contract Tariff with AT&T

As I indicated in phone conversations last week, Combined Companies, Inc. (CCI) was formed specifically to "consolidate" through merger/acquisition the sales and marketing assets and resources of numerous telecommunications resale companies nationwide. At the present time we have fifteen partner companies, and are in final discussions with over 11 others.

As you will note in the Executive Summary that follows, CCI, though a relatively new corporation has already put together, through acquisition, revenues in excess of \$100 Million Dollars annualized.

We are currently in the final negotiations with carriers other than AT&T, and anticipate an offer of a from one or more of these carriers within the next ten days.

Tom, as I indicated to you, our intention is not to have more than one primary IXC agreement (AT&T, MCI, Sprint), and therefore the timing of our discussions with AT&T and the likelihood of a "deal" in the near future could be very important to our decision process.

I look forward to your continued updates on the status of AT&T's interest and remain hopeful that this Tuesday's meeting produces the desired response.

Best personal regards.

- 7051 West Commercial Blvd., Suite 5K, Tamarac, FL 33319 -

Combined Companies, Inc.

January 5, 1995

*Mr. Tom Jones
AT&T
227 West Monroe
Chicago, IL 60606*

Dear Tom:

Please find following the answers to the questions posed by your letter of December 21, 1994.

Q: A List of all other resellers/aggregators with equity or involvement in the requested CT?

A: As we have discussed previously, the equity relationship between CCI and its partner companies is confidential and cannot be released; however, I can advise you that the fifteen member companies have collectively a 40% interest in CCI, with the remaining 60% controlled by myself and my partners.

Additionally, certain specific customers are already known to AT&T, as we have notified AT&T of the transaction and provided a Transfer of Service Agreement to facilitate the name change.

Q: Lists of each existing AT&T plan held by participating resellers that would be rolled into the proposed CT?

A: The specific plan(s) that would be rolled into the proposed CT would depend on the final negotiations with AT&T as to the dollar amount of the CT (dealing with existing business). However, in general, as we have previously stated we are looking at approximately \$100,000,000 of existing commitment (over three years), that we would be looking to assume over a new five year term, with the balance of our new commitment being the win-back component.

Q: A completed Traffic Distribution response as articulated in the Offer Development Document included in this fax.

A: As discussed with you by phone, our read of the Offer Development Document

CCI

provided, is that the majority of the questions are for AT&T to complete; however, we can address the request for the Traffic Distribution Overview (see following).

Q: Clarification on how much of the existing AT&T traffic is residential vs. business by minutes and plan?

A: Our analysis of our existing traffic indicates that the overwhelming majority of our traffic is business; and that any residential traffic is incidental. However, as we have discussed previously, we would be very interested in having residential be a component of our CT, as we are currently placing a substantial amount of residential with MCI and Witel as part of our ABA offerings.

Q: In addition, any specific information on the immediate competitive traffic you plan to move to AT&T would be helpful.

A: As we have previously represented, we are prepared to "start out" with a minimum of \$1,000,000 of win-back business and grow that base along the lines of the first year pro-forma previously provided AT&T.

Tom, as we have discussed numerous times, we are very frustrated with AT&T's apparent lack of desire to meet with us face-to-face to discuss our business plan. It seems incredible to me, especially in light of what we are offering AT&T, that this can not be accomplished.

As I have advised you, we have had very meaningful discussions with other IXC's, and in fact have signed an agreement with Sprint; and are considering doing the same with MCI. Every day that goes by with no progress, only makes the other competitive offers more attractive to us. Additionally, we are constantly being solicited by the existing AT&T Contract Tariff holders to move our traffic to their plans. Or in the alternate, we are aware of existing CT's that very closely match the price points we are seeking without the large win-back commitment that we can file for. I can only hold out so long. I need to see some real interest from AT&T in the next couple of days.

02/27/95 10:40 CHGO SMD + LEGAL

NO.175 P035

From: Amanda Shipp To: Mr. Tom Jones

Date: 1/8/95 Time: 08:59:19

Page 4 of 5

CCI

I look forward to hearing from you.

Sincerely,

Larry G. Shipp

/LGS

Enclosures

- 7061 W. Commercial Blvd., Suite 5K, Tamarac, FL 33319 -

**Combined Companies Inc.
Traffic Distribution Analysis**

**Winback Traffic Model
\$100,000,000 Commitment**

<u>Traffic Category</u>	<u>Total Dollars (000)</u>	<u>%</u>	<u>Total Minutes</u>	<u>Avg Min Per Mon</u>
Long Distance	\$53,300	53.3%	355,333,333	5,922,222
800	\$31,700	31.70%	198,125,000	3,302,083
Card	\$ 2,500	2.50%	10,000,000	186,667
International	\$12,500	12.50%	15,625,000	260,417

**Existing Traffic Model
\$100,000,000 Commitment**

<u>Traffic Category</u>	<u>Total Dollars (000)</u>	<u>%</u>	<u>Total Minutes</u>	<u>Avg Min Per Mon</u>
Long Distance	\$30,000	30.00%	157,894,737	13,157,891
800	\$65,000	65.00%	295,454,545	24,621,211
International	\$ 5,000	5.00%	5,555,556	462,9617

Note:

Both models are based on the following rates (cost per minute):

Long Distance @ \$0.15 for win-back; \$0.19 for existing
Inbound 800 @ \$0.16 for win-back; \$0.22 for existing
International @ \$0.80 for win-back; \$0.90 for existing
Calling Card @ \$0.25

End-user
prices?

The Winback Model is based on the ramp up scenario that we previously discussed and is therefore amortized over five years; The Existing Traffic Model is based on one-year as it represents traffic we currently have.

EXHIBIT F

Personal & Confidential

October 12, 1994

Mr. Alfonse Inga
Winback & Conserve Program, Inc.
55 Main Street
Little Falls, NJ 07424

MEMORANDUM OF UNDERSTANDING

This Agreement is made effective as of the 18th day of October, 1994, by and between Combined Companies, Inc., 7061 West Commercial Blvd., Suite 5-K, Tamarac, FL 33319 ("CCI"), and Winback & Conserve Program, Inc. 55 Main Street, Little Falls, NJ 07424 ("Winback").

WHEREAS, CCI and Winback have negotiated an arrangement whereby Winback will participate with CCI as a partner company, pursuant to a formal agreement which the parties agree to negotiate at a later date, and

WHEREAS, the short and long term goal of CCI, and its partner companies, which will include Winback, is to consolidate individual customer bases of partner companies under CCI, and to offer consolidated product procurement, centralization of administration and management, marketing and customer service, for the mutual benefit of the parties hereto, and

WHEREAS, the parties understand and agree that certain steps need to be taken immediately to achieve the goals of this agreement,

NOW THEREFORE, In consideration of the mutual covenants and promises contained herein, intending to be legally bound, the adequacy and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. CCI and Winback hereby agree to cooperate each with the other to facilitate discussions with AT&T for a certain customized Contract Tariff for, among other things, the mutual benefit of the parties hereto, including the discontinuance without liability of certain Customer Specific Term Plan ~~the~~ (hereinafter "the plans") that currently belong to Winback and CCI. Therefore,

a) Effective with the execution of this Agreement, Winback will transfer, when requested by CCI, and CCI will accept all the plans transferred. The plans being transferred, through use of an AT&T Transfer of Service Agreement(s) following are identified by plan ID, Obligation Per Year, Start Date, Number of Accounts, YTD

Revenue, Monthly Volume, Promo Name, EBO or Not following on Exhibit "A" attached hereto. The current volume associated with these plans is estimated to be approximately \$4,124,349.00 monthly;

b) CCI and Winback agrees that all promotional monies associated with the plans owed Winback by AT&T shall continue to belong to Winback; and, if after the transfer of the plans, AT&T remits the promotional monies to CCI, CCI shall immediately remit its share to Winback.

2. CCI agrees to discontinue the plans upon the successful conclusion of its planned negotiations with AT&T, and warrants to Winback that when discontinued, the plans will be consolidate into a Contract Tariff without any liability to Winback associated with Winback's previous commitments for the plans to AT&T.

3. Upon completion of its planned negotiations with AT&T and CCI's successful placement of Winback's traffic within a new Contract Tariff, CCI agrees to provide Winback supplemental discounts equal to 80% of the discounts available to CCI, for all existing traffic moved by Winback to CCI; provided however, that Winback agrees to continue to use its best efforts to keep the monthly volume of all usage within the plans at not less than \$3,500,000.00 monthly.

4. If CCI is unsuccessful in its planned negotiations with AT&T for a Contract Tariff, CCI and Winback agree to continue to cooperate with each other to locate and identify an existing Contract Tariff for which they might qualify. In addition, if CCI is unsuccessful in negotiations with AT&T for its own contract tariff and pending the location of another Contract Tariff for which the parties may qualify, CCI will use its best efforts to park the traffic into Contract Tariff #516 for the benefit of the parties hereto, and share the income as earned by CCI as outlined in #4 above. While in Contract Tariff # 516, the traffic will earn after CSTP (23%) and RVPP (approximately 5.9%) which shall be passed directly to end users, and a supplemental discount to be negotiated with the 516 contract holder.

5. If CCI has to park the traffic it is expressly understood by the parties hereto that CCI will negotiate the right at its sole option to move the traffic back to CCI's control if necessary to meet any and all commitments associated with the plans prior to their discontinuance.

6. In the event of a breach or threatened breach by either party or its agents of the terms of this Agreement or the Mutual Confidentiality and Non-Disclosure Agreement between the parties, the other party shall be entitled to an injunction prohibiting such breach in addition to other legal and equitable remedies available to it in connection with such breach. Each party acknowledges that the Confidential Information contained herein is valuable and unique to such other party and that use or disclosure of this Agreement will result in irreparable injury to the other party.

7. This Memorandum constitutes the entire understanding between the parties hereto and merges all prior discussions between them relating thereto.

8. No amendment or modification of this Memorandum shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized officers or representatives.

IN WITNESS THEREOF, the parties have executed on the respective dates entered below.

Winback & Conserve

[Signature]
10/10/94
(Date Signed)

CCI
[Signature]
10/12/94
(Date Signed)

RVPP #	TOTAL						COMMENTS
3003	\$62,738.17						Feb-95
3324	\$76,916.55	\$22,016.05	\$33,054.88	\$20,945.64			8/94, 10/94, 11/94
2430	\$3,189.04	\$408.18	\$322.27	\$2,460.01			5/94, 6/94, 8/94
2829	\$48,407.99	\$13,859.07	\$2,205.35	\$14,424.35	\$8,919.13		8/94, 10/94, 11/94, 12/94
1351	\$18,941.18	\$1,324.83	\$472.91	\$1,142.15	\$3,273.45		2/93, 3/93, 5/93, 6/93,
		\$899.67	\$267.54	\$9,491.89	\$1,898.24		8/93, 9/93, 3/94, 9/94,
		\$380.58					Oct-94
3124	\$18,892.84	\$1,634.60	\$3,821.85	\$2,249.37	\$800.67	\$2,710.20	1/94, 2/94, 3/94, 5/94,
		\$273.56	\$2,655.21	\$1,089.89	\$3,787.29		6/94, 7/94, 8/94, 9/94,
							Oct-94
1563	\$45,096.80	\$49.90	\$67.93	\$1,543.78	\$1,093.53	\$2,038.59	3/93, 11/93, 1/94, 2/94, 3/94,
		\$3,033.47	\$2,917.27	\$2,942.13	\$6,859.74	\$12,937.57	4/94, 5/94, 7/94, 9/94,
		\$8,921.83	\$1,072.97				10/94, 11/94, 12/94
1071	\$93,723.74	\$3,659.80	\$5,116.08	\$490.92	\$4,461.99	\$4,904.11	3/93, 4/93, 5/93, 6/93,
		\$8,213.98	\$2,915.95	\$1,457.61	\$10,486.73	\$8,368.04	7/93, 8/93, 9/93, 11/93
		\$3,502.18	\$3,896.43	\$1,659.86	\$3,141.09	\$3,210.70	12/93, 1/94, 2/94, 3/94,
		\$17,177.92					5/94, 6/94, 7/94, 8/94,
							9/94, 10/94, 11/94
1670	(\$440.58)	(\$206.82)	(\$233.76)				7/93, 9/93
1670	\$943,974.69	\$27,784.02	\$106,417.80	\$85,837.48	\$98,844.17	\$136,828.97	1/93, 2/93, 3/93, 4/93,
		\$186,370.75	\$88,762.99	\$12,038.62	\$10,927.23	\$8,382.44	5/93, 6/93, 7/93, 8/93,
		\$6,029.24	\$17,778.92	\$3,183.09	\$22,801.33	\$1,552.13	9/93, 10/93, 11/93, 12/93,
							1/94, 2/94, 3/94, 4/94,
							5/94, 6/94
2626	(\$5,382.98)	(\$8,382.98)					Oct-93
2626	\$915,476.91	\$69,543.08	\$35,296.30	\$53,382.05	\$67,986.07	\$51,559.13	6/93, 9/93, 10/93, 11/93,
		\$63,850.81	\$37,819.98	\$29,294.08	\$59,088.09	\$41,852.32	12/93, 1/94, 2/94, 3/94,
		\$58,334.84	\$18,368.42	\$63,783.64	\$81,811.82		4/94, 5/94, 7/94, 8/94,
							9/94, 10/94, 11/94, 12/94

EXHIBIT G

1 Q And one of the obligations of the customer, Winback &
2 Conserve or CCI, that did not go to PSE in the attempted
3 transfer was the obligation for shortfall and termination,
4 correct?

5 A That's correct. And we so identified that on the transfer
6 of service document.

7 >>>>>>> THE COURT: I know all these facts, Mr. Whitmer. I
8 really do. I swear to God.

9 MR. WHITMER: I have no further questions.

10 REDIRECT EXAMINATION

11 BY MR. YESKOO:

12 Q Mr. Shipp, you said that the negotiations with AT&T over
13 the contract tariff were, in your words, one sided.

14 Can you explain that, please?

15 A Yes, I could.

16 I had, since 1989, developed a very good relationship
17 or working relationship with a number of people at AT&T in
18 Minneapolis as well as in New Jersey in the senior management
19 positions that I held prior to forming my own company. And
20 buying Global and National Telesis, I was friendly enough with
21 AT&T personnel to be able to call up and talk to them about
22 what it would take and what the requirements are for contract
23 tariffs. I, similarly, had been involved in negotiations with
24 AT&T. So I was intimately familiar with the procedures.

25 I contacted a number of personnel at AT&T, among them

STANLEY B. RIZMAN, CSR, OFFICIAL COURT REPORTER, NEWARK, N.J.

EXHIBIT H

1 THE COURT: I've seen these.

2 MR. YESKOO: I showed them to your Honor, but they
3 weren't in the record.

4 I promise to be very brief.

5 THE COURT: Here it is.

6 MR. YESKOO: For the purpose of putting it in the
7 record.

8 THE COURT: Yes. Okay. Go ahead.

9 MR. YESKOO: Thank you, your Honor.

10 (Exhibit P-3 marked in evidence.)

11 Q Could you explain the difference between transfer of
12 traffic and transfer of a plan?

13 A Yes, sir. The tariff allows for the customer of record to
14 be able to move individual locations from plan to plan or in
15 total move plans, traffic.

16 So the transfer of service document allows for the
17 customer of record to be able to direct AT&T through this
18 process to do either all of the traffic or a part of the
19 traffic.

20 Q Approximately how many times --

21 >>>>>>> THE COURT: Where does it say this? How do you get to
22 this?

23 THE WITNESS: How do I get to that?

24 THE COURT: Where does it say that in any document or
25 any tariff? Apart from 2.1.8.

STANLEY B. RIZMAN, CSR, OFFICIAL COURT REPORTER, NEWARK, N.J.

1 THE COURT: Well, my concern here is what happened to
2 the simple issue that was before the FCC and why did it become
3 convoluted into something which was not my contemplation at
4 all?

5 That is my basic question. If you know the answer to
6 it, fine. If you don't, we'll deal with that, too.

7 MR. LA FIURA: I'm not sure I know the complete answer
8 to it. I can give you some answers and make a few observations
9 that, hopefully, will be helpful.

10 First, your Honor, you are correct that the initial
11 tariff transmittal was withdrawn and a new one was submitted
12 and there is a new one that was submitted in October.

13 The reasons why the initial one was withdrawn and the
14 new one was submitted are set forth to some extent in some of
15 the papers we've submitted.

16 I can't add anything to that. Frankly, I don't know
17 any more than what is in those papers.

18 >>>>>>> THE COURT: I have a simple question. Whether you
19 could split the thing in two pieces.

20 That is all the question I had. I mean, you know.

21 MR. LA FIURA: I understand.

22 THE COURT: I got Mr. Meanor's certification here, all
23 right. Here's Tariff Transmittal No. 9229.

24 (Showing.)

25 MR. LA FIURA: I understand.

STANLEY B. RIZMAN, CSR, OFFICIAL COURT REPORTER, NEWARK, N.J.

EXHIBIT I

FW8888

PITNEY, HARDIN, KIPP & SZUCH

(MAIL TO) P.O. BOX 1945, MORRISTOWN, N.J. 07962-1945

(DELIVERY TO) 200 CAMPUS DRIVE, FLORHAM PARK, N.J. 07932-0950

(201) 966-6300

ATTORNEYS FOR Defendant AT&T CORP.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., :

AND :

WINBACK & CONSERVE PROGRAM, :
INC., ONE STOP FINANCIAL, INC., :
GROUP DISCOUNTS, INC., :
800 DISCOUNTS, INC. :

AND :

PUBLIC SERVICE ENTERPRISES :
OF PENNSYLVANIA, INC., :

Plaintiffs, :

v. :

AT&T CORP., :

Defendant. :

CIVIL ACTION NO.
95-908 (NHP)

SECOND
SUPPLEMENTAL
CERTIFICATION OF
CARL WILLIAMS

CARL WILLIAMS, of full age, hereby certifies as follows:

1. I am currently employed by AT&T Corp. ("AT&T") as a
Branch Manager, Business Customer Care Center - Special Markets in

the Specialized Markets Directorate ("SMD"), a position I have held since January, 1993. I have been employed by AT&T for over twenty-three years.

2. I submit this Second Supplemental Certification as part of AT&T's submission in connection with the Court's rehearing on the application for a Preliminary Injunction. The information contained in this Certification is based on a review of the records kept in the normal course of business by AT&T.

3. I understand that there are eight plans for which CCI is the customer of record and from which CCI wishes to transfer substantially all of the locations under the plans. I have attached hereto as exhibit A a chart showing for each of the eight CCI plans, among other things, the start dates, annual and monthly commitments, average monthly billing, annualized billing, and current projected shortfall. Attached as exhibit B is chart showing projected shortfall under the plans if most or all of the locations under the plans were transferred on December 1, 1995.

4. Exhibit A shows the current projected shortfall charges for each plan (if any), which is the difference in the annualized billing and annual commitment for each plan. As of November 27, 1995, the projected shortfall charges on those four plans (#s 3124, 2430, 3524, 2829) amount to approximately \$20,230,000, all of which represent potential unsecured debt to AT&T.

5. Exhibit B demonstrates the estimated shortfall for five of these eight plans if all or substantially all of the locations under the plans are transferred on December 1, 1995. This figure is the difference between the annual commitment and year to date billing (including a projection of average billing through the month of November). The result is that if there was no traffic billed under these plans after December 1, 1995, projected shortfall would increase \$13.293 million, resulting in \$33.523 million in total projected shortfall for CCI. This \$13.293 million represents one component of the additional risk to AT&T if the CCI/PSE transfer were executed without the furnishing of security.

6. A second increased risk for AT&T in the event of the CCI/PSE transfer is the likelihood that CCI would have a reduced ability to satisfy any potential shortfall obligations to AT&T because it would be transferring a significant asset (the revenue stream) to PSE. Although any reduced ability is difficult to quantify, AT&T should insist on a deposit in excess of \$13.293 million, representing the increased risk to AT&T plus the increased risk that CCI would be less able to satisfy any taxified obligations to AT&T.

I certify under penalty of perjury that the foregoing is true and correct.


CARL WILLIAMS

Dated: November 28, 1995

COMBINED COMPANIES, INC.

PLAN ID	START DATE	FIRST BILL		ANNUAL COMMIT	MONTH		YTD		# MO.		AVG MO.		ANNUALIZE		COMMIT		ESTIMATED SHORTFALL
		MONTH	MONTH		COMMIT	COMMIT	BILLING	BILLING	BLG	BLG	BILLING	BILLING	BILLING	BILLING	MEY7	MEY7	
1351	Jul-94		Aug-94	4,800	0,400	0,400	2,250		6	6	0,380		4,500	NO			Not Found
2828	Jun-94		Jul-94	24,000	2,000	2,000	10,890		7	7	1,530		18,310	NO			No Term Plan
1583	Jun-94		Jul-94	3,000	0,250	0,250	2,630		7	7	0,380		4,510	YES			Not Found
3124	May-95		Jun-95	12,000	1,000	1,000	2,375		5	5	0,475		5,700	NO			6,300
2430	Jul-95		Aug-95	7,000	0,583	0,583	0,745		9	9	0,248		2,980	NO			4,020
3524	Jul-95		Aug-95	4,800	0,400	0,400	0,448		3	3	0,149		1,788	NO			3,010
2628	May-95		Jun-95	21,000	1,750	1,750	5,873		5	5	1,175		14,100	NO			6,900
3883	Mar-95		Apr-95	3,000	0,250	0,250	2,444		7	7	0,349		4,180	YES			0,000

EXHIBIT J

AT&T COMMUNICATION
 Adm. Rates and Tariffs
 Bridgewater, NJ 08807
 Issued: June 16, 1994

FF F.C.C. NO. 2
 Revised Page 61.19
 Cancels 8th Revised Page 61.19
 Effective: June 17, 1994

3.3.1.Q.2. Method of Determining Discount

2. Method of Determining Discount -

Example 1 - A Customer commits to an annual net revenue level of \$960,000 but exceeds that commitment by generating \$1,450,000 usage revenue during the second plan year. This example shows the total amount of the discount that the Customer would receive for the second year.

Term Plan Discount x Gross Annual Usage Rev.

Location A

MEGACOM 800 Service (23%) x \$250,000 = \$57,500
 \$250,000 \$250,000 - \$57,500 = \$192,500

Location B

Basic 800 (23%) x \$875,000 = \$201,250 (minus \$.01 per minute
 \$875,000 \$875,000 - \$201,250 = \$673,750 access line discount)

Location C

800 READYLINE (23%) x \$325,000 = \$74,750
 \$325,000 \$325,000 - \$74,750 = \$250,250

Total net usage charges A+B+C = \$1,116,500
 Total usage discounts = \$333,500

3. Penalty for Shortfalls - The Customer must meet the net annual revenue commitment after the discounts are applied. If a Customer does not meet the annual revenue commitment in any one year, after discounts are applied, the Customer must pay the difference between the Customer's actual billed revenue and the annual revenue commitment.

4. Cancellation or Discontinuance of AT&T's 800 Customer

- Specific Term Plan II-Without Liability - The Customer may cancel or discontinue a CSTP II prior to the expiration of its term without liability when:

The Customer: 1) meets any of the conditions specified following, and 2) satisfies the pro-rated annual commitment of the CSTP II being terminated. If the Customer has not met the pro-rated annual commitment, the Customer must pay the difference between the actual billed revenue applicable to the annual revenue commitment (as specified in Section 3.3.1.Q., preceding), and the pro-rated annual commitment if the Customer terminates the existing CSTP II without liability.

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 Cy
 il
 Cy
 Sx

The pro-rated annual commitment is the annual revenue commitment divided by 12 and multiplied by the number of full months elapsed in the current plan year.

Ny
 12
 Ny

AT&T COMMUNICATION
Adm. Rates and Tar. ,
Bridgewater, NJ 08807
Issued: June 16, 1994

T IFF F.C.C. NO. 2
7th Revised Page 61.19.1
Cancels 6th Revised Page 61.19.1
Effective: June 17, 1994

All material on this page is reissued except as otherwise noted.

3.3.1.Q.4. Cancellation or Discontinuance of AT&T's 800 Customer Specific Term Plan II-Without Liability - (continued)

Example:

The Customer has a CSTP II with a \$600,000 annual commitment level. The Customer wishes to terminate the existing CSTP II and upgrade to a new \$1,200,000 CSTP II. The Customer is in Month 6 of the annual commitment. In order to terminate the existing CSTP II without liability, the Customer must have generated a minimum of \$250,000 in net usage (\$600,000 ÷ 12 months x 5 completed months). If the Customer has not generated a minimum of \$250,000 in net usage and discontinues the existing CSTP II, the Customer will be liable for the Discontinuance Liability as specified in Section 3.3.1.Q.5. following unless the Customer pays the difference between the actual billed revenue applicable to the annual revenue commitment and the \$250,000 of pro-rated annual commitment.

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Cy
Cy
||
Cy
Cy
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Cy

In the event that a Customer makes a payment as described above and, at the end of the first year of the new plan has provided revenue in excess of the minimum commitment for that year, AT&T will refund to the Customer the excess revenue received, up to the amount of the Customer's payment.

Ny

Example 1

A Customer makes a \$100,000 payment in order to terminate a \$600,000 CSTP II, and moves to a CSTP II with a commitment level of \$1,200,000. At the end of the first 12 months of the new plan, the Customer provides \$1,400,000 in revenue under the plan. AT&T will refund \$100,000 to the Customer.

Example 2

At the end of the first 12 months of the new plan, the Customer in Example 1 provides \$1,250,000 in revenue under the plan. AT&T will refund \$50,000 to the Customer.

Ny

CSTP II Plans in effect on or prior to June 17, 1994 are not subject to condition 2, preceding.

Cy
Ty

The conditions referred to in 1, preceding, are:

Ny

- Notice of cancellation of the term plan order is received before the last day of the current month, i.e., term plan order is received January 3, cancellation of the order notice must be received before January 31, or;
- The Customer orders a new CSTP II from the Company with a revenue commitment exceeding the original commitment. Discontinuance of the former term plan and installation of the new Term Plan must be done concurrently. This condition applies only to Customers who have ordered an AT&T 800 Customer Specific Term Plan II prior to June 10, 1993, or;

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Cy

AT&T COMMUNICATIONS
Adm. Rates and Tar. 14
Bridgewater, NJ 08807
Issued: June 16, 1994

ATT F.C.C. NO. 2
2nd Revised Page 61.19.2
Cancels 1st Revised Page 61.19.2
Effective: June 17, 1994

All material on this page is reissued except as otherwise noted.

3.3.1.G.4. Cancellation or Discontinuance of AT&T's 800 Customer Specific Term Plan II-Without Liability - (continued)

- The Customer replaces its existing Customer Specific Term Plan II (either alone or in combination with other AT&T 800 Service term plans) with a new Customer Specific Term Plan II with a total revenue commitment (annual revenue commitment times the number of years in the term) over the term of the new plan equal to or exceeding the sum of the remaining monthly (sum of the full months remaining) and/or annual (the annual revenue commitment divided by 12 times the number of full months remaining) revenue commitment of the existing AT&T 800 Service term plan(s) being canceled and replaced with the new Customer Specific Term Plan II. Discontinuance of the former term plan(s) and start of the new Customer Specific Term Plan II must be done concurrently, or;
- The Customer replaces its existing AT&T 800 Customer Specific Term Plan II (either alone or in combination with other AT&T 800 Service term plans) with a new AT&T combined outward calling and inward calling discount plan in a new AT&T term plan (as specified in AT&T Tariff F.C.C. No. 1 or in AT&T Tariff F.C.C. No. 16, Section 10) with a total revenue commitment over the term of the new plan equal to or exceeding the sum of the remaining monthly and/or annual revenue commitments on the existing AT&T 800 Service term plan(s) being canceled and replaced with the new AT&T term plan (as specified in AT&T Tariff F.C.C. No. 1 or in AT&T Tariff F.C.C. No. 16, Section 10). Discontinuance of the former term plan(s) and initiation of the new term plan must be done concurrently, or;
- The Customer subscribes to an AT&T Contract Tariff. The Contract Tariff must have a total 800 service revenue commitment exceeding the sum of the remaining annual revenue commitment for the CSTP II which the Customer is terminating. Discontinuance of the former term plan and subscription to the new Contract Tariff must be done concurrently, or;

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Adm. Rates and Tariffs
Bridgewater, NJ 08
Issued: June 16, 1994

7th Revised Page 61.20
Cancels 6th Revised Page 61.20
Effective: June 17, 1994

-- All material on this page is reissued except as otherwise noted.--

3.3.1.Q.4. Cancellation or Discontinuance of AT&T's 800 Customer Specific Term Plan II-Without Liability - (continued)

- Certain governmental agencies are required by law not to purchase service(s) except under arrangements that terminate if funds are not appropriated. These agencies may discontinue such plans if they terminate service(s) covered under the plans solely because of the lack of needed appropriation for these services or similar services provided by AT&T or other carriers. In the event termination of these services occurs, these agencies will only be liable for that portion of the plan used for which appropriations were available, e.g., monthly or annual usage or revenue guarantees, or;

Cy

Example:

If the Customer utilized the plan for 1 year and a 3-year plan was originally subscribed to, but appropriated funds were available for only 2 years, the Customer's liability would be based on 35% of the revenue commitment on the remaining year of the funded period.

- In the event the Customer is required by the United States Government or its agencies to transfer a portion of its AT&T 800 traffic to AT&T FTS2000 Service, AT&T will reduce the Customer's commitment level to the applicable lower commitment level. To determine the applicable lower commitment level, multiply the revenue over the last three (3) billing months for the AT&T 800 numbers being transferred to AT&T FTS2000 by four (4) to annualize. Subtract this amount from the Customer's annual revenue commitment. The new annual commitment level will be the next lower commitment level, except that the new commitment level may not be more than 33.33% lower than the original commitment. If the next lower commitment level is more than 33.33% lower than the Customer's original commitment level, then the new commitment level will be the next higher applicable commitment level, except that if the current commitment level is under \$420,000, then the plan may be discontinued without liability, if more than 50% of the annual revenue in the plan is transferred to AT&T FTS2000. In addition, if the Customer has subscribed to the CSTF II promotions in Sections 8.1.1.45, 46, or 47 following and transfers a portion of its AT&T 800 CSTF II traffic to AT&T FTS2000 Service within the first year of the CSTF Customer must pay the difference between the original promotional II, the credit and the lower promotional credit applicable to the reduced commitment level, or;

Cy

EXHIBIT K

WINBACK & CONSERVE PROGRAM

55 Main Street
Little Falls, NJ 07424
Voice Line 1-800-4LD-RATE
Voice Line 800-453-7283
Fax 800-338-0409

January 9, 1995

AT&T
Tom Umholtz
5000 Hadley Road
South Plainfield, NJ 07080

Re: AT&T has maximum penalty assessed against them for failure to allow aggregators access to Contract Tariffs.

Dear Tom:

I now see based upon the enclosed article that the Federal Communications Commission has now started to catch on to the games that AT&T is playing to prevent aggregation. As you are aware I have been stating that AT&T has refused to offer me an equitable contract tariff since May of 1993. This FCC article further substantiates my contentions.

I continue to plead for an equitable contract tariff. Hopefully this article will wake you up and give you the initiative to offer me a contract tariff. With the evidence continuing to mount against AT&T I cannot understand how AT&T can continue to refuse to offer me an equitable contract as many other aggregators have already received. The fact that a federal jury will be seeing this year that AT&T has done everything in its power to put us out of business, would make you think that AT&T would finally wise up.

Before our court date you now have the opportunity to lessen the tremendous damages that have been inflicted against me. The ball is in your court, let's see if you are going to continue your oppressive behavior or show some semblance of proper behavior to the future jurors by offering me an equitable contract tariff.

Sincerely,


Alfonse G. Ippa

c: Charles Helein esq.
c: Curtis Meanor esq.
c: Greg Brown
c: Edward Barillari esq.

c: Merric Bloch esq.
c: Maria Nascimientto
c: Joseph Fitzpatrick
c: Richard Higginson



News media information 202 / 418-0600
Recorded listing of release and texts
202 / 418-7722



ONE STOP FINANCIAL, INC.

Business Benefits

55 MAIN ST., LITTLE FALLS, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

Thomas Schreiner
SmithKline Beecham
1201 South Collegeville Road
Collegeville, PA 19426

June 9, 1993

Dear Thomas:

I am grateful that you have decided to stay with us temporarily while we negotiate a private contract with AT&T.

At this point however AT&T has informed us that they will let us know on June 22, 1993 as to whether or not they will offer us a private contract. If they will, we will know by June 28th what our rates will be.

If those rates are not enough to satisfy you I understand from my sales person Ed Simon that you will move to Sprint.

We will get back to you ASAP with information.

Sincerely,

Alfonse G. Inga
Alfonse G. Inga
President

*SAMPLE
MAJOR
ACCOUNTS
LOST !!
no Contract Tariff*

EXHIBIT L

SUMMARY

This Joint Petition for Declaratory Ruling is Petitioners' effort to seek rulings on the issue referred to the Commission by the United States District Court, District of New Jersey. The issue to be resolved by the Commission on this referral is the following:

Could AT&T refuse Petitioners' request to transfer the traffic but not the Customer Specific Term Plans to which that traffic was associated under AT&Ts Tariff F.C.C. No. 2, Section 2.1.8, until AT&T was satisfied that the transfer was not designed to avoid the payment of shortfall and termination charges in violation of the antifraud provisions of the applicable tariff, including AT&Ts Tariff F.C.C. No. 2, Section 2.2.4?

Because the Commission must make findings of fact (including on questions of intent and fraud) to resolve this issue, the issue referred to the Commission by the federal district court cannot be resolved in the context of a Petition for Declaratory Ruling; it must be resolved in the context of a complaint proceeding or other adjudication.

Petitioners avoid the fraud issue in their Joint Petition for Declaratory Ruling, both in their recitation of the facts and in their articulation of the rulings the Commission should issue. Those rulings are phrased in terms of whether or not Section 2.1.8 "**or any other provision of AT&Ts Tariff F.C.C. No. 2" prohibited the transfer**". But the referral was broader; the Court's referral was not only to the interpretation of the relevant tariff provisions of AT&Ts Tariff F.C.C. No. 2 but to their application to the factual circumstances of this case as well.

Notwithstanding the existence of disputed facts which precludes the declaratory rulings requested in the Joint Petition, the Commission should issue a declaratory ruling on the specific issue identified in its Public Notice; whether

EXHIBIT M

RELEASE AND SETTLEMENT AGREEMENT

This Agreement is entered into as of the 1st day of July, 1997 ("Effective Date") between AT&T Corp., a New York Corporation having a place of business at 295 North Maple Avenue, Basking Ridge, New Jersey ("AT&T") and Combined Companies, Inc. ("CCI" or "CUSTOMER"), a Florida Corporation having a place of business at 7061 West Commercial Boulevard, Suite 5K, Tamarac, Florida ("CUSTOMER").

WHEREAS, CUSTOMER subscribes to certain telecommunications services (the "Services") pursuant to AT&T F.C.C. Tariff No. 2 ("Tariff 2"), under CSTP II Plan numbers 2430, 2829, 3124, 3524, and 3663 ("the Plans");

WHEREAS, a dispute has arisen concerning the provision of the Services under the Plans to CUSTOMER and the amounts allegedly owed to and by CUSTOMER in connection with CUSTOMER's use of the Services under the Plans (the "Payment Dispute");

WHEREAS, the Payment Dispute is, in part, the subject of litigation pending in the United States District Court for the District of New Jersey, styled Combined Companies, Inc. et al. v. AT&T Corp., Civil Action No. 95-908 (NHP), ("the New Jersey Action") and before the Federal Communications Commission ("F.C.C."), styled In the Matter of Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) without the Associated CSTPII Plans under Tariff F.C.C. No. 2 on Referral by the United States Court of Appeals for the Third Circuit, Docket No. CCB/CPD 96-20 (the "F.C.C. Action");

WHEREAS, a dispute has also arisen with regard to the Plans concerning an alleged practice of changing, without authorization, the 800 service provider of AT&T customers from AT&T to Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. (collectively, "Winback and Conserve") and/or CCI (the "Slamming Dispute");

WHEREAS, the Slamming Dispute is the subject of a formal complaint pending before the F.C.C., styled In the Matter of AT&T Corp. v. Combined Companies, Inc. and Winback & Conserve Program, Inc., File Number E-97-02 ("the F.C.C. Slamming Action"); and

WHEREAS, AT&T and CUSTOMER wish to settle all pending disputes with regard to the Plans and the Services provided thereunder, including but not limited to the Payment Dispute and the Slamming Dispute;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

EXHIBIT N

court rather than have it decided by the FCC." Third Circuit decision at 6 (appended as Exhibit A to the Joint Petition). The Third Circuit vacated the preliminary injunctive relief because that was "inconsistent with a neutral referral to the FCC, which is appropriate under the circumstances." Jd. at 7. Petitioners then filed this Joint Petition and related Joint Motion for Expedited Consideration.

ARGUMENT

1. THE COMMISSION MAY NOT ISSUE THE REQUESTED DECLARATORY RULINGS BECAUSE MATERIAL ISSUES OF FACT EXIST AS TO EACH REQUESTED RULING

The primary jurisdiction referral was not on the narrow issues identified in the four requested rulings set out in Joint Petition for Declaratory Rulings:⁷ whether or not Section 2.1.8 of AT&Ts Tariff F.C.C. No. 2, "or any other provision of AT&Ts Tariff

The four requested rulings are: (1) "At the time of the attempted transfer... neither Section 2.1.8 of AT&Ts Tariff F.C.C. No. 2, nor any other provision of AT&Ts Tariff F.C.C. No. 2" prohibited the transfer of the traffic without the transfer of the underlying plans or to require a deposit; (2) "Under standard tariffing law, principles, policies, and as required by the plain language of Section 203 of the Act, AT&T had no legal basis and could not have effectively tariffed any changes or additions to Section 2.1.8 or any other provisions of AT&Ts Tariff F.C.C. No. 2, subsequent to January 1995, which could have substantially affected CCI's rights to assign the traffic under its CTSP II plans to PSE in January, 1995;" (3) "Since neither Section 2.1.8 of AT&Ts Tariff F.C.C. No. 2, nor any other provision of AT&Ts Tariff F.C.C. No. 2" prohibited the transfer of the traffic without the transfer of the underlying plans, AT&T had no legal basis for doing so; and (4) "Refusal to accept such transfer" was in violation of Sections 201, 202 and 203 of the Act and Rule 61.54(j) of the Commission's Rules.

EXHIBIT O

A. The Commission Cannot Grant Declaratory Relief Where There Is A Material Issue Of Fact In Dispute

Declaratory relief under Section 1.2 of the Commission's Rules, 47

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§ 1.2, cannot be granted by the Commission "where, as in the present case, all relevant facts are not clearly developed and essentially undisputed." In the Matter of Cascade Utilities, 8 FCC Red 781, 782 (1993) citing, to Aeronautical Radio, Inc., 5 FCC Red 2516 (Com. Car. Bur. 1990) and American Network, Inc., 4 FCC Red 550, 551 (Com. Car. Bur. 1989). Instead, fact-based disputes must be resolved through a complaint proceeding where the parties "through discovery, would have an opportunity to develop the factual record to resolve this dispute" Aeronautical Radio, Inc., supra, 5 FCC Red at 2518.

B. A Material Issue of Fact Exists As To Whether AT&T Had Reasonable Grounds For Believing That The Purpose And Effect Of The Transfer Were To Defraud AT&T

CCI ostensibly sought to transfer the traffic - but not the plans themselves - to PSE under Section 2.1.8 of AT&T's Tariff F.C.C. No. 2. Section 2.1.8.B states that a customer may transfer its WATS service (in this case the relevant WATS services are the CSTP II Plans) to a "new Customer" only if the new customer confirms in writing that it "agrees to assume all obligations of the former Customer at the time of transfer or assignment." This provision, by its terms, allows a transfer of CCI's service to PSE only if PSE agreed to assume all obligations under

EXHIBIT P

Relevant Excerpts of the FCC's Oct 23, 1995 Order and its Effect on Plaintiffs Case

133. Certain commenters raise issues implicating the "substantial cause" test. The "substantial cause" test holds that tariff revisions altering material terms and conditions of long-term service tariff will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions. In response to concerns of IBM and API that AT&T be required to justify any changes to contract-based tariffs, we note that we recently affirmed the applicability of the "substantial cause" test to tariff revisions that alter material terms and conditions of a long-term contract, and we clarified that this test applies to any unilateral tariff modification by non-dominant as well as dominant carriers. Accordingly, if AT&T files a modification to a contract-based tariff, we will take into account that the original tariff terms were the product of negotiation and mutual agreement, and we will consider on a case-by-case basis, in light of all the relevant circumstances, whether a substantial cause showing has been made. We will apply the substantial cause test in this way in any post-effective tariff investigation, pursuant to Section 205, and in complaint proceedings. We also will consider, on a case-by-case basis, whether to allow customers to terminate contracts without liability.

134. Finally, we note that AT&T has voluntarily committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding and elsewhere. AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and AT&T has committed to comply with this agreement:

As a general practice, **AT&T grandfathers both existing customers and subscribed customers** (i.e., customers who have submitted a signed order for service) when it introduces a change to a term plan (including Contract Tariffs, term plans under Tariffs 1, 2, 9, and 11, Tariff 12 Options and Tariff 15 CPPs), and **it commits to continue that process**. In exceptional cases, however, grandfathering may not be appropriate either because: (1) a change is necessitated by typographical errors, a service inadvertently priced below costs, rate changes where no individual rates (post-discount) are increased, or other comparable circumstances, or (2) the change is necessary to bring clarity to a non-rate term or condition, where it is necessary to treat all customers alike (such as a change to the provisions for how orders are processed, but not including changes to the body of Contract Tariffs, Tariff 12 Options or Tariff 15 CPPs). In such circumstances, AT&T commits for a twelve-month period to **offer its customers the following additional protections** not required of non-dominant carriers: - where AT&T makes any change to an existing term plan, AT&T will afford the affected customers 5 days meaningful advance notice of the tariff filing to give the customer the opportunity to object; provided, **however, that for changes to discontinuance with or without liability, deposits and advance payments, or transfer or assignment of service, AT&T will file on 14-days' notice.** (AT&T would have the unaffected right to change underlying tariff rates -- such as a general change to SDN rates -- unless the term plan protected the customer from such changes.) Where the affected customer(s) agrees to the revision, AT&T will note that agreement in its transmittal letter and file the change on 1 day's notice. **Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice. With respect to the 14 or 6 days notice filings, the substantial cause test will be applicable to the same extent as it is today.**

135. AT&T has also voluntarily committed to report to the Common Carrier Bureau and to the Telecommunications Resellers Association Executive Board, on a quarterly basis, its performance in processing reseller orders. This commitment is for a term of one year.

In addition, for at least twelve months, AT&T will provide a single point of contact to receive reseller complaints not resolved through the first point of contact, the AT&T account manager. Finally, AT&T represents that it has agreed with the Telecommunications Resellers Association to establish alternative dispute resolution procedures:

AT&T is willing to establish a quick, efficient, commercially-oriented process for resolving disputes with its reseller customers. AT&T is willing to enter into mutually agreeable private party arbitration agreements with these parties. AT&T is also willing to develop with the Telecommunications Resellers Association Executive Board a model two-way Arbitration Agreement. AT&T would be willing to enter into such an agreement with any of its reseller customers for resolution of commercial disputes between the reseller and AT&T under the following guidelines:

- a) The Arbitration Agreement would be based on the United States Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association.
- b) The Arbitration Agreement would bind each party to arbitration as the exclusive remedy for any covered claims that arise in the period covered by the agreement. The covered period initially would be twelve months, but the reseller will be permitted to end the covered period earlier by providing at least 30 days prior written notice.
- c) Covered claims would include all claims between the parties relating to tariffed services, the carrier-customer relationship between the parties, or competitive practices, except claims that tariff provision or practice is unlawful under the Communications Act would not be covered claims. Covered claims would include, for example, claims that AT&T has misapplied or misinterpreted its tariffs, that the customer has failed to comply with its tariff obligations, or that either party has engaged in unlawful competitive practices such as misrepresentation or disparagement.
- d) The Arbitration Agreement would provide for a 90 day arbitration process, unless the parties agree to a longer period.

136. MCI argues that AT&T's commitment in its September 21, 1995 **letter to grandfather**, at its discretion, existing customers adversely affected by unilateral contract changes (permitting them to receive AT&T performance on the same terms and conditions as the original contract), or allowing them to terminate their agreements with AT&T without liability if they pay under utilization charges, is "patently anti-consumer." We note, however, that AT&T's October 5, 1995 Ex Parte Letter clearly addresses the concerns raised by MCI. **We believe that the commitments proffered by AT&T in its October 5, 1995 Ex Parte Letter contribute to addressing the tariff-related concerns raised by the commenters in this proceeding, and we therefore order AT&T to comply with these voluntary commitments.**

137. We also note that some of the **tariff-related issues raised by commenting parties transcend the scope of this proceeding**. For example, questions concerning the application of the filed rate doctrine to contract tariffs may arise with respect to carriers other than AT&T. We intend to examine these and other questions in the context of our review of our regulatory scheme governing the interstate, domestic, interexchange industry.